HUMAN RIGHTS WATCH

September 2006 Volume 18, No.11(C)

"Everyone Lives in Fear"
Patterns of Impunity in Jammu and Kashmir

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Map of Kashmir Region

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I. Summary

In the quiet of the Ramadan afternoon, as Muslim Kashmiris wait to break their fast, the only sound is the wailing of a mother. It is a relentless, desolate howl. People start to gather, standing around in sullen silence. An elderly man steps forward. "Why are you here? Can any of you bring our boy back? Can you punish his killers? So many people are dead. Why? Can you answer that?"

Since 1989, the wails of family members mourning their dead have become ubiquitous to life in Jammu and Kashmir state.

Kashmiris are trapped in an armed conflict between abusive Indian government forces and armed militant groups waging a brutal separatist struggle with the backing of the Pakistani government. Most Kashmiri families have lost a relative, friend, or neighbor in the violence. At least twenty thousand Kashmiri civilians have been killed (Kashmiri groups say that the number is much higher). Tens of thousands have been injured. Hundreds of thousands have been internally displaced, including some three hundred thousand Hindu Kashmiris. Approximately thirty thousand Muslim Kashmiris have fled to neighboring Pakistan as refugees, while thousands have crossed that same border to train as fighters. Ordinary, day-to-day life has been upended and degraded.

Suspicion and fear continue to permeate the Kashmir valley. A knock on the door late at night sends spasms of anxiety through households, afraid that a family member will be asked by the security forces or militants to step outside for "a minute" and then never return. The bombs of militants go off in crowded markets without any warning. Psychological trauma related to the violence has been enormous, as life itself is constantly under threat.

Over the years a conflict over Kashmiri identity and independence has slowly but visibly mutated into an even more dangerous fight under the banner of religion, pitting Islam against Hinduism, and drawing religious radicals into its heart. Indian security forces claim they are fighting to protect Kashmiris from militants and Islamist extremists, while militants claim they are fighting for Kashmiri independence and to defend Muslim Kashmiris from a murderous Indian Army. In reality, both sides have committed widespread and numerous human rights abuses and violations of international humanitarian law (the laws of war), creating among the civilian population a pervasive climate of fear, distrust, and sadness.

In this report we document serious abuses, especially the targeting of civilians, by both government forces and militants in Jammu and Kashmir. Those abuses continue, despite a tentative peace process that includes talks between New Delhi, Islamabad, and some of

Kashmir's separatist leaders, modest confidence-building measures between India and Pakistan, and the 2002 election of a state government with an avowed agenda to improve the human rights situation. Particular attention is given in this report to the problem of impunity from prosecution, whereby those responsible for abuses rarely get investigated, let alone tried and convicted.

Indian army and paramilitary forces have been responsible for innumerable and serious violations of human rights in Kashmir. Extrajudicial executions are widespread. Police and army officials have told Human Rights Watch that alleged militants taken into custody are often executed instead of being brought to trial because they believe that keeping hardcore militants in jail is a security risk. Most of those summarily executed are falsely reported to have died during armed clashes between the army and militants in what are euphemistically called "encounter killings." A well-known example is the murder of five men who were identified by the police and army as the militants responsible for the massacre of thirty-six Sikhs in Chattisinghpora in 2000 and then killed in a supposed armed encounter. Forensic tests ordered by the state government later showed them to be local villagers who were innocent of the Sikh massacre.

In many other cases Indian security forces have shot civilians under the authority of laws such as the Jammu and Kashmir Disturbed Areas Act and the Armed Forces (Jammu and Kashmir) Special Powers Act, which allow lethal force to be used "against any person who is acting in contravention of any law or order for the time being in force in the disturbed area." For example, on February 23, 2006, soldiers in Handwara shot at a group playing cricket, suspecting that a militant was hiding among them, and killed four boys, including an eight-year-old. Even the army has admitted that the extraordinary powers to shoot have led to "mistakes." The army described as an "error of judgment" the July 2005 killing of three teenage boys in Kupwara who had sneaked away to smoke a cigarette at night and were shot without warning by troops. Such mistakes, which are not uncommon, greatly inflame public passions in Jammu and Kashmir.

Indian security forces have long been responsible for enforced disappearances—that is, they deny having custody of an individual, typically in conjunction with their torture or extrajudicial execution. Kashmiri human rights defenders say that at least eight thousand people have "disappeared" since the conflict began; most were last seen in the custody of troops. While the state government has admitted that nearly four thousand people are "missing" in Jammu and Kashmir, it claims that many of them actually crossed into Pakistan-administered Azad Kashmir to join the militants. While the number of new "disappearances" appears to have decreased in the past few years from the huge numbers that characterized the early years of the conflict, that they continue at all is shameful for the world's largest democracy. Moreover, there is still no information about the fate of thousands of individuals "disappeared" by Indian security forces since the beginning of the insurgency.

Interviews conducted by Human Rights Watch show that torture of detainees, in particular severe beatings during interrogations of suspected militants and their supporters, remains the norm. Kashmiris also complain of a form of punishment in which individuals are picked up for questioning and tortured in order to obtain information about a family member believed to be a militant. Militants who have surrendered said that they are treated with suspicion and often brutally interrogated. One former militant told Human Rights Watch that when he "disappeared" for over a month in 2004 he had actually been in army custody, where he was blindfolded, tied up, and beaten while his interrogators asked him for information about his former comrades. Despite claims of a new campaign by the army to train members of the security forces in public relations, army, paramilitary and police behavior towards the public is usually aggressive, distrusting, and rude. "Slaps and kicks have become a form of greeting for the security forces," observed one villager in Kupwara district.

Kashmiris are often arbitrarily and illegally detained. The Additional Advocate General told the Srinagar High Court recently that there were 4,500 suspected militants in jail, awaiting trial. Many of them, say human rights lawyers, have been in custody for ten or more years and some have never been produced in court. Without evidence to secure a conviction or to prevent them from being released on bail, they are often held under a draconian preventive detention law called the Jammu and Kashmir Public Safety Act (PSA). The PSA allows for detention without trial for up to two years to prevent an individual from "acting in any manner prejudicial to the security of the state or the maintenance of public order." The detention period is often renewed at the end of the two-year period by issuing a new PSA arrest warrant, meaning individuals spend years in detention without ever having the chance to appear before a court and contest the allegations against them.

As part of the current state government's "healing touch policy" and the ongoing peace talks between New Delhi and some of the separatist groups, dozens of alleged militants, including some who served more than two years under the PSA, have been released. The state government claims that of the nearly 1,200 held in detention when it came to power in November 2002, three years later only 376 alleged militants remain in custody under the PSA, including nearly two hundred foreigners, most of them Pakistani. Human rights defenders insist the number of those in custody is larger, but since no central record is maintained, it is impossible to independently verify the claims. One indication of the current scope of the problem is that 443 habeas corpus ("produce the body") petitions were filed to challenge detentions in 2005.

Kashmiris have also been subjected to human rights abuses and humanitarian law violations by secessionist armed groups, commonly referred to as militants. Often intentionally ignored by supporters of Kashmiri independence or its accession to Pakistan are the numerous massacres, bombings, killings, and attacks on schools attributed to the militants.

Throughout the conflict, militant groups have targeted civilians, including women and children, whom they consider to be "traitors to the cause" or for expressing views contrary to those of one or another armed group. Alleged militants have murdered nearly six hundred Kashmiri politicians since the conflict began, usually as retribution for joining in the electoral process. Officials conducting the polls have been killed or tortured, some with their noses or ears chopped off. Militants have violently assaulted Kashmiris, including women, by chopping off ears or noses, as a means of punishing their relatives whom they consider to be traitors—informers, security personnel, or surrendered militants. In several cases children have been abducted or executed.

Militants have been implicated in bomb attacks even outside Jammu and Kashmir. After a series of bomb blasts in India's capital New Delhi on October 29, 2005, which killed over fifty civilians, a little-known group called Islami Inqilabi Mahaz claimed responsibility. In March 2006, a series of bomb blasts in Varanasi killed twenty people. Once again, an unknown group called Lashkar-e-Qahar called journalists in Jammu and Kashmir to claim responsibility and threaten more attacks. The July 2006 serial blasts in Bombay's commuter trains that killed nearly two hundred have also been attributed to militants sympathetic to the Kashmiri struggle for secession, though as of this writing no evidence has been produced.

Militant groups have attacked religious minorities in Kashmir such as Hindus and Sikhs, as well as ethnic minorities such as the Gujjars and Bakarwals whom the militants target because they believe them to be government informers. Militants have committed at least twenty massacres of civilians from minority groups, usually in the middle of the night when they were asleep. Even as Kashmiris were climbing out of the rubble and mourning their dead after the October 8, 2005 earthquake, militants decapitated ten Hindus in Rajouri district. In May 2006, thirty-five Hindus were killed in the remote hamlets of Doda and Udhampur districts; police blamed the Pakistan-based Lashkar-e-Toiba. In recent years, as the conflict has increasingly taken on religious overtones, many militant groups have also begun to impose a more fundamentalist version of Islam in predominantly Sufi Kashmir. Some women have been punished for not adopting Islamic dress codes as demanded by some militant groups, while cable television operators and Internet centers have been targeted for promoting "immorality." Recently, the Pakistan-based Harkat-ul-Jihadi Islami has even asked women to stop using mobile phones or visiting public parks.

Although many of the militant groups currently operating in Jammu and Kashmir have become increasingly unpopular, Kashmiris are afraid to speak out against them. A Kashmiri journalist who requested anonymity explained to Human Rights Watch in July 2005:

> We know what the army can do. We are familiar with their abuses. They can kill us, but they cannot destroy us. But the militants are gradually changing our very ethos…. They are killing with impunity and we can never tell who they are.

There is considerable evidence that over many years Pakistan has provided Kashmiri militants with training, weapons, funding, and sanctuary. Officially, Pakistan denies ever arming and training militants. However, real decision-making authority and management of the "Kashmir struggle" has long rested firmly with the Pakistani military and its Inter Services Intelligence (ISI) agency and the militant organizations it has supported and mentored. Under pressure from Washington after the September 11, 2001 attacks on the United States, Pakistan banned several militant groups in January 2002, including the Jaish-e-Mohammad and the Lashkar-e-Toiba, although they have continued to operate after changing their names. India blames these groups for many armed attacks.

Yet Pakistan appears to be keeping its options open should peace talks collapse. Former militants told Human Rights Watch that Pakistan's army and intelligence services, in particular the ISI, continue to support armed groups operating in Jammu and Kashmir. In July 2005, as the snow melted and mountain passes opened, the Indian armed forces claimed to have killed at least forty armed militants in just one week as they attempted to cross into Jammu and Kashmir from Pakistan-administered Kashmir. Recent reports in the Pakistani media have also stated that many training camps are still functioning. After the 2005 earthquake, several armed groups conducted significant emergency relief operations in Pakistan-administered Kashmir, handing out weatherized tents even before the Pakistani government could mobilize.

* * *

Under international humanitarian law (the laws of war), the conflict in Jammu and Kashmir is considered to be a non-international (internal) armed conflict. Applicable law, to which both state armed forces and opposition armed groups must abide, includes Article 3 common to the 1949 Geneva Conventions and customary international humanitarian law. This law prohibits attacks against civilians and civilian objects, and requires that civilians and captured combatants be treated humanely at all times. Serious violations of the laws of war are war crimes, which states have a duty to prosecute.

Indian security forces are also bound by international human rights law, such as is found in the International Covenant on Civil and Political Rights, which India ratified in 1979. Human rights law prohibits extrajudicial executions, torture and other mistreatment, enforced disappearances and arbitrary arrest and detention. States have a duty under international law to investigate and prosecute serious violations of human rights.

Throughout the conflict in Jammu and Kashmir, impunity from prosecution for serious crimes has been a common thread. Impunity occurs when the state consistently fails in its responsibility—because of a lack of capability or political will or laws shielding state abusers—to hold perpetrators of human rights violations accountable. This creates an atmosphere in which

violators believe that they can get away with the most serious crimes. As stated by the United Nations (U.N.) General Assembly in its March 2006 resolution on the right of victims of human rights abuses to a remedy, states must "[i]nvestigate violations effectively, promptly, thoroughly and impartially and, where appropriate, take action against those allegedly responsible in accordance with domestic and international law."

Although India has internal systems of inquiry and punishment, Human Rights Watch—despite several letters requesting the information from the Indian government—has received no details of any cases in which members of the Indian security forces have been prosecuted and convicted for serious human rights violations. In March 2006, Chief Minister Ghulam Nabi Azad said that 134 army personnel, seventy-nine members of the Border Security Force, and sixty policemen have been punished for committing human rights abuses since the insurgency first began. However, as no details of these incidents are available and the chief minister claimed at the same time that there were only 122 complaints of human rights violations since 2002, these figures cannot be taken at face value, and the commitment to transparently investigate, prosecute and punish individuals responsible for abuses remains in doubt. Instead, soldiers, paramilitaries, and police are routinely shielded by both their uniformed and civilian superiors in Jammu and Kashmir and New Delhi and by laws that make it extremely difficult to prosecute members of the armed forces in civilian courts.

Indian and Kashmiri policemen watch as shooting breaks out following an attack by suspected Pakistani Islamist militants in the center of Srinagar's business district, July 29, 2005. © 2005 Robert Nickelsberg

Indian law offers a remarkable amount of legal protection to members of the armed forces and civilian officials implicated in criminal offenses. Section 45 of the Criminal Procedure Code of

1973 protects any member of the armed forces from arrest for "anything done or *purported to be done* [emphasis added] by him in the discharge of his official duties except after obtaining the consent of the Central government." Section 197(2) of the Criminal Procedure Code is a sweeping impunity provision that applies throughout India. It makes it mandatory for a prosecutor to obtain permission from the federal government to initiate criminal proceedings against public servants, including armed forces personnel. And both the Jammu and Kashmir Disturbed Areas Act and the Armed Forces Special Powers Act provide effective immunity from civilian prosecution, stating, in identical language, that:

> No prosecution, suit or other legal proceedings shall be instituted, except with previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

Military personnel are also subject to the Manual of Military Law and Regulations, which details the rules and procedures for the investigation, prosecution, and punishment of military offenses and crimes in the armed forces. There is little evidence that the military has shown any greater interest in prosecuting its own for human rights violations in Jammu and Kashmir than has the civilian justice system.

This impunity has an impact that spreads well beyond the original crime, encouraging other abuses. For instance, a Kashmiri man whose son was "disappeared" told Human Rights Watch that police warned him that if he failed to pay a bribe or complained to the authorities, not only would the son be killed, but he himself would be taken into the jungle, killed, and identified as a "foreign militant."

In this report we trace impunity for the most serious abuses dating back to the beginning of the conflict. We describe how in 1990 the Central Reserve Police Force shot and killed at least thirty-five Kashmiri demonstrators (according to some reports, as many as one hundred) as they reached the Gawakadal Bridge on Srinagar's Jhelum River. A similar number of demonstrators protesting the killing of religious leader Mirwaiz Maulvi Mohammad Farooq were gunned down by security forces on May 21, 1990. In October 1993 at least thirty-seven people were killed when personnel from the 74th Battalion Border Security Force opened fire to disperse more than ten thousand people demonstrating in Beijbehara against an earlier incident of indiscriminate firing in Srinagar. And then there is the case of the murder of human rights lawyer Jalil Andrabi in 1996 by the army. No one has been arrested let alone prosecuted in such cases, which have seared the consciences of many Kashmiris and taken on almost legendary status as proof that the Indian state is fighting a war not to protect Kashmiris, but to subjugate them.

Impunity continues to the present. In May 2003, Javed Ahmad Magray, a seventeen-year-old student, was murdered one night near his home in Srinagar. An investigation by the district administration concluded that Magray had been abducted and killed by the army. Although the investigation identified the officer responsible, he was never arrested or even compelled to testify during the inquiry, because the army claimed that his unit had been moved out of Jammu and Kashmir. This is where the immunity provisions in the law kicked in—under the Armed Forces (Jammu and Kashmir) Special Powers Act, the state government must seek permission from the central government to prosecute members of the armed forces. As is almost always the case, as of May 2006 that permission had not been granted. Despite several requests to the army for information, there is no evidence that the Indian army has sought to prosecute the officer under the military justice code.

Pakistan has never held any militant accountable for crimes committed in Jammu and Kashmir. Instead, many militants enjoy the sanctuary of Pakistani soil after they commit abuses across the border. Leaders of militant groups have never made any public statements renouncing their policy of attacks upon civilians, or given any indication that those responsible for such abuses should be held to account.

Impunity not only affects the victims and their families. In Jammu and Kashmir, impunity has bred cynicism and distrust of authority. It has led to divisions in society that will take a long time to heal. Many Kashmiris told us that impunity for human rights violations is the single biggest obstacle to a restoration of normality in the state. They made it plain that no peace or ceasefire will be meaningful or enduring without an end to the almost complete impunity that the Indian security forces and the militants have enjoyed.

Many in Jammu and Kashmir believe that if the Indian government had taken action against abuses, ordered immediate investigations, and transparently prosecuted and punished those found responsible, many lives might ultimately have been spared. Public willingness to overlook brutal crimes by the militants might have been much lower. Instead, government abuses have acted as a recruiting sergeant for the militants and, throughout the conflict, provided a platform to garner support for the insurgency.

* * *

When the armed rebellion first began in 1989, most Kashmiris believed it would be a short struggle. As militants started a campaign of bombings, grenade attacks, and killings of civilian officials, almost every day there were demonstrations. Kashmiris were out in the streets in the tens of thousands, calling for "*azaadi*," or independence. Local government came to a halt and, taken aback by the scale of the protests, it scrambled futilely to restore order, deploying nervous,

ill-trained troops who used unnecessary lethal force, killing scores of unarmed demonstrators. Separatist leader Abdul Ghani Bhat, recalling those days to Human Rights Watch, said:

> We were fools. We thought freedom was round the corner. All we had to do was come out on the streets in protest. Pakistan would send its army to support us, the world would see that every Kashmiri wanted freedom, and India would be forced to agree. Instead, we ended up with all this violence.

"All this violence" has brought immense suffering to Kashmiris. It has even almost led to war between nuclear-armed India and Pakistan. After a deadly attack on India's parliament in December 2001 that left twelve people, including the five gunmen, dead, India blamed Pakistan-based militant groups operating in Jammu and Kashmir. All five gunmen, according to the police, were Pakistani. After the attack, the two countries deployed over a million troops to the border. There was frightening talk of a nuclear war until, under international pressure, the troops were pulled back.

A cautious peace process ensued, begun by India's then Prime Minister Atal Bihari Vajpayee and Pakistan's leader, General Musharraf. It has been sustained by international pressure driven by the post-September 11, 2001 "war on terror" and fear of nuclear war between countries that have gone to war three times since independence in 1947, plus a certain amount of "Kashmir fatigue" on both sides of the border, and the desperate yearning of most Kashmiris for an end to the conflict.

Elections in India in 2004 brought a coalition led by the Congress party to power in New Delhi and the two governments have continued to meet, albeit at a languid pace and with a modest agenda. While both Prime Minister Manmohan Singh and General Musharraf say they are committed to the peace process, progress has been slow.

Although the two governments may not have found an immediate solution to Kashmir, they are encouraging people-to-people contact by easing visa regulations and providing cheap bus and train services across the border. However, because of a history of distrust, the process is still tenuous and all sides can point to abuses by the other as a reason to continue the fight. However, more and more voices are beginning to point to the same atrocities as a reason to stop.

Many observers believe that there is an unprecedented opportunity to reach a final settlement that addresses Kashmir's critical human rights situation. The United States, the world's sole superpower and a proponent of a settlement, is for the first time considered a friend of both India and Pakistan. In Jammu and Kashmir, a coalition government between the People's Democratic Party (PDP) and the Congress party is in power after defeating a discredited state administration in 2002 elections. The coalition had made human rights one of its main campaign

planks. Though it has little power over the national security services, the state government has repeatedly called for an end to chronic problems such as "disappearances" and custodial killings.

Perhaps most important, there has been a significant change in both the Indian and Pakistani governments' attitudes, with senior Indian officials admitting human rights violations (as opposed to earlier flat denials) and some Pakistani officials admitting their role in influencing and supporting the militants. Kashmiri rebel political leaders also admit that armed groups have committed human rights abuses. That, too, is a significant shift from the early years of the conflict.

Although the process is inordinately slow, India has also begun to talk to Kashmiri rebel political leaders, though it is yet to initiate talks with the Pakistan-based militant leaders. New Delhi is demanding a convincing end to Pakistani support to the militants. There have been some proposals towards a possible solution, including the demilitarization of Kashmir and eventual self-rule for Kashmiris, who are presently separated by the Line of Control that divides Indian- and Pakistan-administered Kashmir. Most analysts believe this to be premature because neither country will want to relinquish its military presence in the areas under their control. India also says that with militants still attacking civilians, it cannot risk withdrawing troops. Pakistan and the rebel groups say that if India only agreed to work honestly towards an honorable settlement, there would be no need for an armed struggle and militancy would end.

Perhaps the greatest impetus for a settlement is weariness on all sides with a conflict that has brought so much misery but no victory for either the Indian army or the militants. Nor has it resolved Kashmir's future as part of India, Pakistan, or as an independent entity. It is noteworthy that many Kashmiris in favor of independence have come to this view not just as a political statement, but because of the constant abuse that they have witnessed and suffered.

Many ordinary Kashmiris are beginning to say that they are paying too heavy a price in this conflict and that it is the militants, and not just the Indian security forces, that are to be blamed. According to the Mumbai-based International Center for Peace Initiatives, nearly 85 percent of those killed in militant attacks since the conflict started have been Kashmiri Muslims. Many Kashmiris told Human Rights Watch that they have a desperate hope for peace and, feeling let down by those claiming to represent them, including mainstream politicians, Kashmiri nationalists and militant leaders, seek new leadership. They believe that without authentic local leadership, they will not be adequately represented in negotiations. But they are concerned that independent Kashmiri voices with priorities inconsistent with established militant agendas will be branded as "traitors" and targeted for attack.

Abdul Ghani Lone was one of the first moderate leaders of the All Party Hurriyat Conference to become a vocal advocate of dialogue and compromise. He was killed on May 21, 2002. His son Sajjad Lone believes that Pakistan-backed militant groups murdered his father because he

advocated a settlement with India. Sajjad Lone described what he said had become the greatest tragedy in the Kashmir conflict, that Kashmiris were being killed by their professed liberators:

> I did not want my father's body in the martyrs' graveyard. I knew what would happen. The victims and the killers are increasingly ending up lying beside each other in our martyrs' graveyard.

Just as human rights abuses and impunity have been a cause and fuel for the conflict, human rights protections and accountability can be key ingredients for a solution. There can be no better confidence building measure than an end to abuses on both sides and the beginnings of an effort to address the crimes of both the past and present. With strong and committed political leadership in India, Pakistan, and Jammu and Kashmir, and pressure and support from the United States and other key international actors, substantial progress can be made in a short period of time. Then "all this violence" may begin to become part of Kashmir's past, instead of its future.

Key recommendations

- The government of India, the government of Pakistan, and all militant and Kashmiri groups should place human rights protection mechanisms at the center of any attempt to resolve the conflict and ensure responsibility for abuses by ending impunity, without which a sustainable settlement is impossible.
- India and the state government of Jammu and Kashmir should each establish an independent and impartial commission of inquiry into serious violations of international human rights and humanitarian law by Indian security forces since the beginning of the conflict.
- India is a member of the United Nations Human Rights Council and thus bound to cooperate with its mechanisms. The Indian government should issue a standing invitation to the relevant United Nations thematic human rights rapporteurs or working groups to come to Jammu and Kashmir to investigate the human rights situation.
- The United Nations Human Rights Council should appoint a special rapporteur with an ongoing mandate to publish regular and public reports on the human rights situation in Jammu and Kashmir and Azad Kashmir. The governments of India and Pakistan should publicly commit to full cooperation with the special rapporteur, including with any necessary visits.
- Given the continuing failure of the military justice system to prosecute members of the armed forces for human rights abuses, members of the army and other security forces of all ranks implicated in serious rights abuses should be fully and fairly prosecuted in civilian courts.
- All legal provisions providing effective immunity to members of the armed forces should be repealed, including Section 45 of the Criminal Procedure Code, Section

197(2) of the Criminal Procedure Code, the Jammu and Kashmir Disturbed Areas Act, and the Armed Forces (Jammu and Kashmir) Special Powers Act.

- The Indian parliament should amend the Human Rights Protection Act to allow the National Human Rights Commission to independently investigate allegations of abuse by members of the armed forces.
- The Indian government should publicly release detailed information on all arrests, prosecutions, and convictions of army troops, paramilitaries, police, and public officials for human rights violations since the beginning of the conflict. It should release the same information on an annual basis in the future.
- Militant groups should take all necessary steps to abide by international humanitarian law, including: ending direct or indiscriminate attacks on civilians; the summary execution, torture or other ill-treatment of persons in custody; attacks on schools; and the recruitment of children into their forces. Militants groups should publicly condemn abuses by any militant group and ensure that there is accountability for such abuses.
- Pakistan should stop providing arms, finance, sanctuary, and training to militant groups that have failed or are unwilling to abide by international humanitarian law. Otherwise Pakistan will be held complicit in abuses by such groups.
- The international community should urge the governments of India and Pakistan and all militant and Kashmiri groups to place human rights protection mechanisms at the center of any attempt to resolve the conflict. No sustainable settlement will be possible without an end to abuses and impunity.

A note on methodology

Human Rights Watch conducted research for this report by sending teams to both Jammu and Kashmir and Azad Kashmir. Research in Jammu and Kashmir was conducted from 2004 to February 2006 and in Azad Kashmir in 2005 and 2006. Additional research was conducted by telephone, email and in meetings with nongovernmental organizations (NGOs) and officials in New Delhi, Islamabad and elsewhere. Human Rights Watch interviewed government officials, army officers, police officials, politicians, journalists, human rights defenders, members of the international and diplomatic community, militants, and victims of human rights violations. Information here about unresolved or ongoing cases is at least as reported at the time of Human Rights Watch's most recent research in Jammu and Kashmir, in February 2006. Wherever possible, efforts have been made to provide more up-to-date information in such cases. Despite several letters requesting the information from the Indian government, at the time of writing Human Rights Watch had received no details of any cases in which members of the Indian security forces have been prosecuted and convicted for serious human rights violations.

In order to protect victims and others who might face reprisals by either side for speaking against them, names and any information that might identify them, such as places where interviews were held or specific dates of those meetings, have been withheld in certain cases.

II. Background: People, the India-Pakistan Dispute, Political History, Recent Developments, and Peace Talks

The people of Jammu and Kashmir

India's northernmost state, Jammu and Kashmir, lies in the Himalayas and borders Pakistan, Tibet, and China. The state comprises the administrative regions of Jammu, which lies in the plains below the Pir Panjal range, and has a population of approximately 4.39 million; Ladakh, bordering Tibet, with a population of 0.23 million; and the Kashmir valley between the Pir Panjal and Panjri ranges, with a population of 5.44 million.[1]

Jammu and Kashmir is the only Muslim majority state in India. However, the state is divided roughly along religious lines. Ninety-five percent of the residents of the Kashmir valley are Muslim, the overwhelming majority of whom are Sunni, while 50 percent of the population of Ladakh is Buddhist and 46 percent is Muslim (most of the Muslims of Ladakh are Shia). Jammu has a very different religious make-up, with 66 percent of the population Hindu and most of the rest Muslim.[2] The literacy rate is 54 percent, lower than the national average of 65 percent.[3]

Before the conflict, Jammu and Kashmir had a large and profitable tourist industry, which provided a major portion of the state revenue. But tourist numbers have dropped from more than seven hundred thousand visitors a year before 1989 to fewer than eight thousand per year in the 1990s. With an improvement in the overall security situation, the number of tourists visiting the state is gradually increasing, though those numbers may decrease after the recent deliberate targeting of tourists by militants in 2006.[4]

The conflict has also exacted a heavy toll on the state's infrastructure. Over 1,100 government buildings, 640 educational buildings, eleven hospitals, 337 bridges, and more than ten thousand privates houses and shops have been destroyed in violent incidents since the conflict began.[5]

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[1] The Planning Commission of India, Jammu and Kashmir Development Report, District-wise Population of Jammu and Kashmir, Chapter II, September 2003 [online] http://planningcommission.nic.in/plans/stateplan/sdr_jandk/sdr_jandk.htm (retrieved April 4, 2006).

[2] BBC News, India/Pakistan government census, [online] http://news.bbc.co.uk/1/shared/spl/hi/south_asia/03/Kashmir_future/html/default.stm (retrieved January 9, 2006). (The portion of Kashmir administered by Pakistan is 99 percent Sunni.)

[3] Ibid.

[4] "Valley's Tourist Graph on High," *The Indian Express*, January 9, 2006, [online] http://www.jammu-kashmir.com/archives/archives2006/kashmir20060109d.html (retrieved February 5, 2006). Shujaat Bukhari, "Protest Against Attacks on Tourists," *The Hindu*, July 15, 2006, [online] http://www.thehindu.com/2006/07/15/stories/2006071505511500.htm (retrieved July 29, 2006).

[5] International Center for Peace Initiatives, "Costs of Conflict Between India and Pakistan, Costs for Jammu and Kashmir", July 2004, p. 73.

The state's inability to generate sufficient resources has led to an increased dependency on central assistance and borrowings. In an effort to generate employment opportunities and prevent the youth from joining the militancy, the central government has announced several aid packages over the years. The central government spends eight to ten times more on each citizen in Jammu and Kashmir than any other Indian state.[6]

India-Pakistan dispute

Jammu and Kashmir was the name of the territory that now includes territory under Pakistani and Chinese control. Since 1947, roughly a third has come under Pakistan's control; this territory is called Azad Kashmir by Islamabad and Pakistan-Occupied Kashmir by New Delhi. The remaining two-thirds is called Jammu and Kashmir by New Delhi and includes the Hindu and Buddhist majority regions.[7] Islamabad calls this portion Indian-Occupied Kashmir.

The conflict in Kashmir has its origins in the state's accession to India in 1947. As colonial rule came to an end in South Asia, the British decided to create two separate countries, India and Pakistan. The smaller kingdoms that were part of the British "Raj," having accepted the suzerainty of Britain, were offered the choice of resuming their independent status or joining with either Hindu-majority India or Muslim-majority Pakistan. Most chose to accede based on geography or religious majority. However, Kashmir was a problem because it was a border Muslim-majority state ruled by a Hindu king. The British left its fate for future negotiations because the Maharaja of Kashmir had failed to decide whether to accede to either India or Pakistan.[8]

Kashmir immediately became the subject of conflict between the two new countries. Pakistan believed that the division of territories generally between the two countries had been influenced by Lord Mountbatten, the last colonial viceroy, who got on well with Indian leader Jawaharlal Nehru but had no great personal affection for Pakistan's leader, Mohammad Ali Jinnah.[9] Believing that it had already received an unfair division of territory, soon after the end of British rule in the subcontinent, Pakistan backed an invasion of Kashmir by Pakistani tribesmen. Unable to defend his kingdom, the Maharaja of Kashmir, Hari Singh, sought India's assistance, and on October 26, 1947, signed an Instrument of Accession,[10] paving the way for Indian soldiers to come to his aid.[11] The first war between India and Pakistan had begun.

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[6] Ibid. p. 75.

[7] Federal Research Division of the Library of Congress, Country Studies, India, 2003-2005, [online] http://countrystudies.us/india/123.htm (retrieved July 21, 2005).

[8] M.J. Akbar, *Kashmir: Behind the Vale* (New Delhi: Roli Books, 2003), pp. 94-102.

[9] Alastair Lamb, *Kashmir: A Disputed Legacy*, *1846-1990* (UK: Roxford Books, 1991), p. 117.

[10] Instrument of Accession, 1947, [online] http://mha.nic.in/accdoc.htm (retrieved July 21, 2005).

[11] The Maharajah, however, insisted on a special deal under which Kashmir would have its own constitution. Under Clause 7 of the Instrument of Accession, Kashmir retained a measure of autonomy. It stated that, "Nothing in this Instrument shall be deemed to commit me in any way to acceptance of any future constitution of India." As a result of Kashmir's conditional accession, Article 370 was incorporated into the Indian Constitution which provided inter alia: "Only Article 1 of the Constitution of India, which defines the territories of India, and Article 370 itself apply to Kashmir ipso facto.

The war ended in January 1949 with Indian and Pakistani military representatives defining a ceasefire line, freezing the positions held by the two armies. The contour of this line has changed slightly after later wars, but has remained more or less the de facto border between Pakistan and India in Kashmir and is called the Line of Control. The total area of Jammu and Kashmir is 101,387 sq. km., while Azad Kashmir contains about 78,387 sq. km. [12]

In January 1948 India filed a complaint against Pakistan with the U.N. Security Council under the dispute mechanism of the United Nations Charter.[13] In retrospect this is ironic, as India now vehemently opposes any U.N. or other third-party involvement in working out a solution to the Kashmir dispute. In a series of resolutions in 1948-49, the Security Council called for a ceasefire; asked Pakistan to withdraw all forces, regular or irregular; and, in a third part that was not binding unless the first two had been implemented, said that the future status of the entire Kashmir state would be determined "through a free and impartial plebiscite."[14] Both countries supported the provision in Security Council Resolution 47, adopted on April 21, 1948, which stated that in a fair plebiscite Kashmiris should only have the choice to accede to either India or Pakistan.[15] The resolution did not include an option to vote for independence, an aspiration of many Kashmiris. India has never held the plebiscite described in Security Council Resolution 47. Nor has Pakistan withdrawn its troops from Kashmir as envisaged by this and the other resolutions of 1948-49.[16]

The Security Council also created the United Nations Commission for India and Pakistan (UNCIP) to investigate and mediate the dispute.[17] In January 1949, the United Nations Military Observer Group in India and Pakistan (UNMOGIP) was deployed to supervise the ceasefire between India

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All other articles …may be extended to Kashmir… only in 'consultation' with the state government if it pertains to matters regarding legislative power of Parliament, and with the 'concurrence' of the state government if it pertains to other matters." Text of Article 370, [online] http://www.jammu-kashmir.com/documents/jk_art370.html (retrieved July 21, 2005).

[12] Federal Research Division of the Library of Congress, Country Studies, India, 2003-2005, [online] http://countrystudies.us/india/123.htm (retrieved July 21, 2005). China controls another 42,685 sq. km. In 1963 Pakistan handed over around 5,000 sq km. area in the Shaksgam Valley to China. Although the transfer was subject to a settlement on the Kashmir issue between the two claimants, China has already built a military highway on this territory and is unlikely to vacate it. Rahul Bedi, "After failing to talk through their differences, India and Pakistan resume the shelling in Kashmir," Janes.com, July 23, 2001, [online] http://www.janes.com/regional_news/asia_pacific/news/misc/janes010723_1_n.shtml (retrieved July 21, 2005).

[13] Text of India's complaint to the Security Council, January 1, 1948, [online] http://www.jammu-kashmir.com/documents/jkindiacomplaintun.html (retrieved July 21, 2005). Article 35 of the U.N. Charter states in part: "Any Member of the United Nations may bring any dispute, or any situation of the nature referred to in Article 34 [situations 'likely to endanger the maintenance of international peace and security'], to the attention of the Security Council or of the General Assembly."

[14] India and Pakistan, United Nations Documents, Security Council Resolution 47 (1948), S/726, April 21, 1948, [online] http://www.un.org/Depts/dpko/missions/unmogip/docs.html (retrieved December 20, 2005).

[15] Security Council Resolution 47 says that: "The Security Council, … Noting with satisfaction that both India and Pakistan desire that the question of the accession of Jammu and Kashmir to India or Pakistan should be decided through the democratic method of a free and impartial plebiscite… Recommends to the Governments of India and Pakistan the following measures as those which in the opinion of the Council are appropriate to bring about a cessation of the fighting and to create proper conditions for a free and impartial plebiscite to decide whether the State of Jammu and Kashmir is to accede to India and Pakistan." [online] http://www.kashmiri-cc.ca/un/sc21apr48.htm (retrieved January 9, 2006).

[16] Sumit Ganguly, ed., *The Kashmir Question: Retrospect and Prospect* (London: Frank Cass & Co, 2003), pp. 2-3.

[17] United Nations Peacekeeping, "India-Pakistan Background," [online] http://www.un.org/Depts/dpko/dpko/co_mission/unipombackgr.html (retrieved January 9, 2006).

and Pakistan.[18] On March 30, 1951, following the termination of UNCIP, the Security Council in Resolution 91 decided that UNMOGIP should continue to supervise the ceasefire in Kashmir.[19]

To defend its failure to hold a plebiscite, India points to Pakistan's failure to withdraw troops from the area under its control and also cites the vote of the Constituent Assembly of Jammu and Kashmir, elected in 1952 in polls held by India that, despite an overwhelming Muslim representation, voted in favor of confirming accession to India.[20] New Delhi also says that since Kashmiris have voted in successive national elections in India, there is no need for a plebiscite.

India's argument for the legitimacy of its claim to all of Jammu and Kashmir, including the portion administered by Pakistan, is based on the 1947 Instrument of Accession signed with Maharaja Hari Singh.[21] Similar instruments determined the distribution of all princely states in the 1947 partition; questioning the accession of Jammu and Kashmir would imply unraveling the constitutional and legal basis for the creation of India and Pakistan.[22] Pakistan, however, has always questioned the legality of Jammu and Kashmir's accession to India and pointed out that India agreed to the U.N. resolutions calling for self-determination after the Instrument of Accession had been signed. Pakistan believes that Muslim-majority Jammu and Kashmir will choose to be part of Pakistan and it will justify, once again, the ideological basis for the 1947 partition.[23] India, for that same reason, is unwilling to let go of Jammu and Kashmir, as a Muslim majority state is proof that India is a secular and liberal state.[24]

India and Pakistan fought another war over Jammu and Kashmir in 1965. Once again, infiltrators from Pakistan entered Jammu and Kashmir state, backed by the Pakistan army in what was called Operation Gibraltar. Initially, Indian troops were deployed only in Kashmir, but in September 1965 Indian forces opened another front in Punjab, advancing towards Lahore. The United States and United Kingdom, the primary suppliers of arms to the two countries,

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[18] United Nations Military Observer Group in India and Pakistan, [online] http://www.un.org/Depts/dpko/missions/unmogip/index.html (retrieved June 1, 2004).

[19] Security Council Resolution 91, S/2017, India Pakistan Question, March 30, 1951, [online] http://daccessdds.un.org/RESOLUTION/GEN/NRO/072/IMG/NR0007210.pdf.

[20] In Security Council Resolution 122, January 24, 1957, the United Nations Security Council rejected this argument. The various Security Council resolutions on Kashmir are available online at http://www.kashmiri-cc.ca/un/ (retrieved July 20, 2005).

[21] It is worth noting that when the Muslim rulers of the Hindu-majority Gujrati states of Junagadh and Manavadar signed instruments of accession to Pakistan, they were overruled by the Indian government, which seized the states on the grounds of geographical contiguousness and religious majority. In Hyderabad, which had a Muslim ruler and a Hindu majority, India argued that the right of self-determination was paramount when the Nizam of Hyderabad sought to declare independence for his state. Hyderabad was forced into the Indian Union through "police action" in 1948.

[22] J.N. Dixit, *Anatomy of a Flawed Inheritance: Indo-Pak Relations, 1970-1994* (Delhi: Konarak Publishers, 1995), p. 200.

[23] Apart from religion, Pakistani scholars also explain that Jammu and Kashmir is vital to the country's economy because it is the source of most rivers flowing into Pakistan. Among the various disputes related to Kashmir between India and Pakistan is the construction of dams in Jammu and Kashmir, which will allow India control over Pakistan's irrigation and water sources.

[24] Wajahat Habibullah, "The Political Economy of the Kashmir Conflict: Opportunities for Economic Peacebuilding and for U.S. Policy," Special Report 121, United States Institute of Peace, June 2004, [online] http://www.usip.org/pubs/specialreports/sr121.html (retrieved August 18, 2004).

reacted by suspending military aid. After a meeting in Tashkent (in the then-Soviet Union) between Indian Prime Minister Lal Bahadur Shastri and Pakisani President General Ayub Khan, peace was declared with both armies withdrawing to the 1949 ceasefire line.

In 1971, a third war between the two countries led to the secession of East Pakistan and its independence as Bangladesh. This truncation of Pakistan further exacerbated the distrust between Pakistan and India.[25] Since India had helped in dividing Pakistan, it also became a priority for Islamabad to ensure unity in the country that remained through an anti-Indian Islamic ideology.[26]

After the 1971 war, India and Pakistan signed a pact on July 2, 1972, commonly known as the Simla Agreement, which defined the Line of Control in Kashmir and committed both sides to future bilateral negotiations on all outstanding issues, including Kashmir.[27] India then took the position that the mandate of the United Nations mission UNMOGIP had lapsed and said that Resolution 47 no longer applied because of changes in the original territory, with some parts "having been handed over to China by Pakistan and demographic changes having been effected in Azad Kashmir and the Northern Areas."[28] UNMOGIP, however, continues to maintain its mandate and functions, but has failed to make any discernable progress in maintaining peace in the region.[29] Pakistan still formally insists on a plebiscite, as do some factions among the Kashmiri rebel groups. But recently, President Musharraf and some militant groups have said that they are willing to give up the demand for self-determination if India agrees to be flexible on demands for demilitarization and self-governance in Kashmir.[30]

The neighbors came to the brink of war several times after the Simla treaty: in 1986 when India conducted Operation Brasstacks, massive military maneuvers near the Pakistani border; in 1990, when India first discovered the extent to which the Kashmir rebellion was being assisted by Pakistan and threatened retaliation; in 1999, when Pakistan seized territory in Jammu and Kashmir's Kargil sector; and once again in 2002, when both countries deployed troops at the border after the Indian parliament was attacked on December 13, 2001, allegedly by Pakistani

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[25] Not only did Pakistan end up losing half of its territory, but its military was routed, leaving some ninety thousand prisoners of war—a reason, many Indians believe, why the Pakistani military is strongly opposed to India. See "India Pakistan Troubled Relations, 1971 War," BBC News, [online] http://news.bbc.co.uk/hi/english/static/in_depth/south_asia/2002/india_pakistan/timeline/1971.stm (retrieved April 12, 2006).

[26] Hussan Haqqani, "Pakistan's Endgame in Kashmir," in Ganguly, ed., *The Kashmir Question*, pp. 43-45.

[27] Under the agreement, both countries agreed to resolve their differences over Jammu and Kashmir bilaterally and "by peaceful means." The full text of the Simla Agreement is available online at http://www.armyinkashmir.org/v2/hist_persp/simla_agreement_text.shtml (retrieved June 1, 2005).

[28] Embassy of India, Washington D.C., "A Comprehensive Note on Jammu & Kashmir," [online] http://www.indianembassy.org/policy/Kashmir/Kashmir_MEA/UN.html (retrieved July 20, 2005). India believes that a number of non-Kashmiris have moved into the region, which will make a fair plebiscite impossible.

[29] Before the Simla Agreement had been signed, Pakistan had repeatedly raised the Kashmir issue at the United Nations. By the 1960s, however, India had developed close ties with the Soviet Union, which vetoed any Security Council resolutions reminding India of its commitments to the United Nations on Kashmir.

[30] "Pak Militant Groups Say UN Resolutions on Kashmir Not Viable," *Press Trust of India*, January 14, 2006, [online] http://www.rediff.com/news/2006/jan/14pak1.html (retrieved February 7, 2006).

militants (the last two episodes are described in more detail below).[31] In each case it was international diplomacy—particularly pressure from the United States—that dissuaded the rivals. But the heavy deployment of troops and the exchange of fire each time led to civilian deaths, injuries and displacement.

Political history inside Jammu and Kashmir

Jammu and Kashmir is the only state in India with its own constitution.[32] It was guaranteed autonomy in all regional affairs apart from foreign policy, defense and communications. However, this autonomy never materialized.

Through the 1950s and 1960s, there was increasing political discontent with the central government's attempts to manipulate politics in Jammu and Kashmir. Political leaders who demanded genuine autonomy and pro-plebiscite activists were repeatedly jailed. In 1964 the first militant group, the Jammu Kashmir Liberation Front (JKLF), was formed to fight for an independent state.

In 1975, in a move that largely discredited him with pro-independence Kashmiris, Sheikh Abdullah, who had originally led popular dissent against Maharaja Hari Singh and later against political control by Delhi, signed an accord with Indian Prime Minister Indira Gandhi that promised greater autonomy to Jammu and Kashmir. [33] Sheikh Abdullah's National Conference party, however, won an overwhelming victory in the 1977 state elections, which were considered to be free and fair.[34] Parties like the Jamaat-e-Islami, which openly advocated allegiance to Pakistan, were virtually wiped out politically.[35]

After Sheikh Abdullah's death in 1982, his son Dr. Farooq Abdullah took over as chief minister. Once again, New Delhi interfered in Kashmiri politics. The ruling Congress party removed Farooq Abdullah in 1984, and then his successor, G.M. Shah, in March 1986, when for the first

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[31] Sumit Ganguly and Devin T. Hagerty, *Fearful Symmetry: India-Pakistan Crisis in the Shadow of Nuclear Weapons* (University of Washington Press, 2005), [online excerpts] http://www.rediff.com/news/2005/jun/02spec1.htm (retrieved July 21, 2005).

[32] Legislation adopted by the Indian parliament does not apply to the state of Jammu and Kashmir, which must adopt those laws through its own legislature. The state has many separate laws, such its penal code, called the Ranbir Penal Code.

[33] Often called the "Lion of Kashmir," Sheikh Abdullah had been a prominent leader of India's independence movement in Kashmir. In 1931, he founded the Muslim Conference, later renamed the National Conference. In May 1946, Maharaja Hari Singh jailed Sheikh Abdullah for dissent. Sheikh Abdullah was released after the Instrument of Accession was signed, and was made prime minister of the state's interim government. Sheikh Abdullah's insistence on autonomy soon led to disagreements with New Delhi and he was put under detention on August 9, 1953. The National Conference remains one of the largest political parties in Jammu and Kashmir and has won several elections. In recent years, National Conference party workers and leaders have come under increasing attacks by militants.

[34] Ganguly, ed., *The Kashmir Question*, p. 4.

[35] Akbar, *Kashmir: Behind the Vale*, p. 192.

time the central government imposed governor's rule—direct rule by New Delhi—in the state.[36] Governor Jagmohan took charge of the state administration until fresh elections could be held.

In 1986, Prime Minister Rajiv Gandhi and Farooq Abdullah signed a new political agreement establishing an electoral alliance. This only added to a sense of betrayal among Kashmirs, who were shocked at Farooq Abdullah's compromise with the very Congress party that had pushed him out of power two years earlier.[37] Many Kashmiris had already turned against Farooq Abdullah because of allegations of widespread corruption and incompetence during his previous rule. After Farooq's perceived sell-out to the Congress party, there seemed to be increasing support for a new opposition party, the Muslim United Front (MUF), a collection of Islamic and secessionist parties that included the Jamaat-e-Islami.[38] Many Kashmiri youth supported this coalition, which contested the March 1987 elections to the state assembly.

The state elections of 1987 were the turning point in the history of Jammu and Kashmir. There were mass arrests of MUF candidates and party workers and widespread and credible allegations of vote-rigging.[39] Kashmiris became disillusioned with electoral politics and there was enormous resentment against the victorious National Conference-Congress coalition that claimed victory in the elections. Journalist Tavleen Singh writes in her well-regarded book, *Kashmir: A Tragedy of Errors*:

> The rigged election was the beginning of the end…. Nearly everyone I met said that most of the youths who had acted as election agents and workers for MUF candidates were now determined to fight for their rights differently. They had no choice but to pick up the gun, was the message I was given.[40]

Many of those youths were supporters of the pro-independence JKLF.[41] Many other MUF workers joined their ranks.

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[36] President's rule, or in the case of Jammu and Kashmir state, governor's rule, is provided for under Article 356 of the constitution. Under this article, the central government is empowered to dismiss a state legislature if the governor, a federal appointee, advises that "governance of the state cannot be carried on in accordance with the provisions of the constitution." Under the Jammu and Kashmir constitution, governor's rule may be imposed for six months, after which president's rule, which permits New Delhi to suspend state government and rule directly, may be enacted for six-month periods. Constitution of India, [online] http://indiacode.nic.in/coiweb/welcome.html (retrieved April 16, 2006).

[37] Akbar, *Kashmir: Behind the Vale*, p. 213.

[38] Tavleen Singh, *Kashmir: A Tragedy of Errors* (New Delhi: Viking, 1995), p. 101.

[39] Balraj Puri, *Kashmir: Towards Insurgency* (New Delhi: Orient Longman Limited,1993), p. 53.

[40] Singh, *Kashmir: A Tragedy of Errors*, p. 103.

[41] Formed in 1964, the Jammu Kashmir Liberation Front was the first Kashmiri militant group formed to fight for independence. Initially known as the Jammu Kashmir National Liberation Front, it was renamed in 1971. The group opened offices in several countries including Pakistan, the United States and United Kingdom. In February 1984, the group was accused of kidnapping and murdering an Indian diplomat in the U.K. Its leader, Amanullah Khan, was deported to Pakistan in 1986. A unit of the JKLF was set up in Jammu and Kashmir in 1988.

There were several demonstrations with protestors shouting anti-India slogans.[42] Militant groups successfully organized a boycott of the 1989 Indian parliamentary elections. Meanwhile, a militant campaign of violence began, with the JKLF claiming responsibility for a series of explosions in Kashmir, damaging government buildings and public transport. The JKLF openly admitted that it received arms and training in Pakistan.[43] The law and order situation began to spiral out of control.

On December 8, 1989, the JKLF abducted Rubaiya Sayeed, daughter of the new home minister in the Indian government, a Kashmiri named Mufti Mohammad Sayeed (later to be chief minister of Jammu and Kashmir—see below).[44] She was freed when the government complied with ransom demands and released five detained members of the JKLF. National attention was suddenly focused on Kashmir. In Kashmir the public mood had initially changed: most Kashmiris did not support the kidnapping of a young, unmarried woman. But when the released militants were brought to Srinagar, jubilant crowds celebrated in the streets. Support for the militants soared, with many Kashmiris treating the release of the five as a victory against New Delhi.[45] Taken aback, the Indian government dispatched more troops to the state.[46] In January 1990, Jagmohan, already unpopular because he was seen as party to New Delhi's dismissal of an earlier elected government, was once again appointed governor.[47] Chief Minister Farooq Abdullah resigned in protest. Governor's rule was imposed, putting New Delhi into direct confrontation with the Kashmiri rebels.

Jammu and Kashmir by then had fallen into near civil war. There were daily protests as tens of thousands marched on the streets, calling for independence. The militant groups, with arms and training from Pakistan, continued their attacks, murdering and threatening Hindu residents, carrying out kidnappings and assassinations of government officials and suspected informers, and engaging in sabotage and bombings. Hundreds of thousands of Hindu Kashmiris, known as "pandits," fled the valley. Militant groups that espoused an extremist Islamist ideology issued threats to shopkeepers and others engaged in business that they considered un-Islamic, including liquor dealers and cinema hall owners.[48] In a book called *My Frozen Turbulence in Kashmir,*

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[42] Singh, *Kashmir: A Tragedy of Errors*, p. 110.

[43] Asia Watch (now Human Rights Watch/Asia) and Physicians for Human Rights, *A Pattern of Impunity* (New York: Human Rights Watch, 1993), p. 21. Zulfiqar Ali, ''Pakistan Trained Us', Rebel Says," BBC News, June 16, 2005, [online] http://news.bbc.co.uk/2/hi/south_asia/4099740.stm (retrieved July 29, 2006).

[44] Mufti Mohammad Sayeed became chief minister of Jammu and Kashmir in November 2002.

[45] Singh, *Kashmir: A Tragedy of Errors*, p. 120.

[46] "Excess Will Continue As Long As Militancy Exists," Rediff.com, December 16, 1999, [online] http://www.rediff.com/news/1999/dec/16blood1.htm (retrieved August 21, 2005).

[47] Although initially with the Congress party, Jagmohan eventually became a member of the Bharatiya Janata Party and was a cabinet minister from 1998 to 2004 in the BJP-led coalition government. Jagmohan's appointment as governor in 1990 by the V.P. Singh government which was supported by the BJP was opposed by the Congress Party, the Communist Party of India, the Communist Party of India (Marxist) and other opposition political groups.

[48] Asia Watch (now Human Rights Watch/Asia), *Kashmir Under Siege* (New York: Human Rights Watch, 1991), p. 129.

Jagmohan claims that law and order had collapsed when he took charge in 1990, with the valley "stricken with violence, bloodshed and brutality."[49]

Unwilling to acknowledge or appease disenchanted Kashmiris, the Indian government termed the rebellion as Pakistan's "proxy war" with India.[50] Indian security agencies responded with unprecedented brutality to quell the rebellion. [51] Counter-insurgency laws such as the Armed Forces (Jammu and Kashmir) Special Powers Act and the Jammu and Kashmir Disturbed Areas Act were enacted in 1990, giving security agencies draconian powers of detention and interrogation. Since it was virtually impossible to identify the militants, who had local support, civilians were subjected to terrible abuses by state security forces. The Indian army and other state forces carried out large numbers of summary executions, custodial killings, torture, "disappearances," and arbitrary detentions.[52] Security operations included regular warrantless searches, usually in the middle of the night, and after grenade and sniper attacks by militants upon security posts, security guards would storm the neighborhood nearby, setting fire to buildings, and randomly beating up residents. Writes journalist Humra Quaraishi: "Through those months, journalists, both Indian and foreign, reported on havoc Jagmohan's policies were wreaking on the lives of ordinary Kashmiris. Going back to those reports, the year 1990 seems to me the year of the written forewarnings that were never heeded."[53]

Peaceful demonstrations were dispersed by indiscriminate firing by the security forces. In this report, we describe three such incidents, in January 1990 in Srinagar, in October 1990 also in Srinagar, and in 1993 in Beijbehara.

Many former militants say that they joined the armed groups because they were furious at the violations and wanted revenge.[54] The basis of the armed conflict gradually changed from a

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[49] Jagmohan, *My Frozen Turbulence in Kashmir* (New Delhi: Allied Publishers Limited, 1991), p. 342.

[50] The Indian government has consistently blamed Pakistan for planning, training and arming the insurgency in Kashmir. Militants, both Kashmiris and Pakistani citizens fighting in Jammu and Kashmir, have never denied that they receive arms and training from Pakistan. When the violence first began, Indian officials chose only to focus on the Pakistani influence. Governor Jagmohan, in his book *My Frozen Turbulence in Kashmir*, describes at length Pakistan's Operation Topac, which was conceived by then president, General Zia-ul-Haq. The basic objective of Operation Topac was to make Kashmir part of Pakistan. The first phase of this operation, Jagmohan quotes General Zia-ul Haq as saying, would be: "A low level insurgency against the regime…. We whip up anti-Indian feelings amongst the students and peasants, preferably on some religious issues…. Organize and train subversive elements and armed groups with capabilities, initially to deal with paramilitary forces located in the Valley."

[51] Asia Watch, *Kashmir Under Siege*, p. 4.

[52] Human Rights Watch has regularly reported the human rights situation in Jammu and Kashmir. See Asia Watch, *Kashmir Under Siege*; Asia Watch and Physicians for Human Rights, *Pattern of Impunity*; Human Rights Watch, "India's Secret Army in Kashmir: New Patterns of Abuse Emerge in the Conflict," A Human Rights Watch Report, Vol. 8, No. 4 (C), May 1996, [online] http://www.hrw.org/campaigns/kashmir/1996/; and "Behind the Kashmir Conflict: Abuses by Indian Security Forces and Militant Groups Continue," A Human Rights Watch Report, July 1999, [online] http://www.hrw.org/reports/1999/kashmir/.

[53] Humra Quraishi, *Kashmir: The Untold Story* (Penguin Books India, 2004), p. 56.

[54] Ibid. pp. 56-59. Quraishi also cites newspaper editorials written at that time. For instance, *The Hindustan Times* on April 28, 1990, said that "the 'tough' policies adopted by Jammu and Kashmir governor Jagmohan has not only proved counterproductive but has further alienated the people of Kashmir… [who] have been virtually driven to the terrorists' fold due to hatred generated by the repressive measures of the state administration."

secular demand for independence to a war grounded in Islamic terms. The pro-independence JKLF became weaker and was gradually replaced by the religious extremist Hizb-ul-Mujahedin, which promoted accession to Pakistan. Several JKLF members and supporters were killed, allegedly by militants belonging to the Hizb-ul-Mujahedin.

Jagmohan's administration came under increasing criticism, and eventually, five months after his re-appointment, Jagmohan was recalled and a new governor appointed.[55] Jagmohan has refused to acknowledge that human rights violations took place under his watch, insisting that the "militants and propaganda outfits, and the rumor mill, which had always worked overtime in Kashmir, were soon busy churning out stories of excesses, of atrocities, of hundreds of persons being killed."[56] But he adds, "Sitting in your office, you cannot really say with precision whether the force used was excessive."[57]

Meanwhile, after a series of collapsed coalition governments in New Delhi, the Congress party came to power again in 1991, led by P.V. Narasimha Rao. But despite the change in governments, the policy towards Jammu and Kashmir remained the same. While there were some efforts at talks with the separatists, troops continued to act with brutality.

In mid-1992 the government launched a "catch-and-kill' policy to execute captured militants.[58] Human Rights Watch reported in 1993:

> In August 1992, Indian government forces launched a new offensive against the militants, called Operation Tiger, a campaign of surprise raids designed to capture and kill suspected militants and terrorize civilian sympathizers. Summary executions of detainees and indiscriminate attacks on civilians escalated during the operation, and during the one that followed, called Operation Shiva. Over the next several months, the security forces also engaged in frequent arson attacks, burning houses, shops and entire neighborhoods.[59]

India offered to negotiate with militant groups, but often claimed that there were no Kashmiri representatives with whom they could hold talks.

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[55] See The Origins of Impunity: Failure of Accountability in Jammu and Kashmir Since the Start of the Conflict, Death of Maulvi Farooq, p. 46.

[56] Jagmohan, *My Frozen Turbulence in Kashmir*, p. 18

[57] Ibid.

[58] "India's Secret Army in Kashmir," *A Human Rights Watch Report*, Vol. 8, No. 4(C), Chapter III, [online] http://www.hrw.org/campaigns/kashmir/1996/India-05.htm (retrieved April 2, 2003).

[59] Human Rights Watch and Physicians for Human Rights, *Pattern of Impunity*, p. 2.

In response, on March 9, 1993, the All-Parties Hurriyat Conference (APHC), an umbrella organization of over twenty groups, some demanding independence and others accession to Pakistan, was founded to act as the political voice of the movement.[60]

By the mid-1990s, Indian forces had gained the upper hand in the major towns and villages of the Kashmir valley. But the nature of the conflict had changed. While in the early years of the conflict the militants were usually from the Kashmir valley, by 1996 the Kashmiri component of the battle for secession had largely been subdued. Amnesty offers had encouraged many to surrender. Others had been killed or detained. Many dropped out of combat but stayed in Pakistan-administered Kashmir.

By the mid-1990s, the battle for Kashmir was taken up largely by foreign fighters drawn from the waning Afghan war.[61] The groups they belonged to represented a dangerous development in the conflict as they had no accountability to the local populations. They operated openly out of Pakistan, often with the support of the Pakistan army and intelligence services, particularly the Inter Services Intelligence agency (ISI), Pakistan's powerful military intelligence service.[62] Young Pakistanis responded to the appeal for religious war in Kashmir. After a few months of training, they were sent into Jammu and Kashmir. The Pakistani army helped arrange the infiltration of the militants across the Line of Control.[63]

These organizations seldom claim responsibility for any attacks, and often change their names, particularly after they have been banned. Some, like the Harkat-ul Ansar,[64] Harkat-ul-Mujahedin, Al Badr, Jaish-e-Mohammad and Lashkar-e-Toiba have, over the years, been blamed for several attacks in which civilians were executed. The Harkat-ul Ansar, for instance, calling itself Al

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[60] Global Security.org, All-Parties Hurriyat Conference [online] http://www.globalsecurity.org/military/world/pakistan/aphc.htm (retrieved January 9, 2006). The All-Parties Hurriyat Conference has since split. While some leaders have broken away, others have formed a separate faction of the APHC. However, the faction led by Mirwaiz Umar Farooq is still regarded as the most powerful of the Kashmiri separatist political voices.

[61] Praveen Swami, "Terrorism in Jammu and Kashmir in Theory and Practice," in Ganguly, ed., *The Kashmir Question*, p. 55.

[62] In *The Lost Rebellion*, author Manoj Joshi writes: "Over the years, Indian intelligence has identified some five brigadiers and eleven colonels working out of the ISI headquarters in operations connected to India. In addition, there are have been nine officers involved in training militants, and another twenty field officers in Muzaffarabad and other points of infiltration. In the field, the ISI also maintains an extensive presence of camp instructors, launch specialists and counter-intelligence agents." Manoj Joshi, *The Lost Rebellion: Kashmir in the Nineties* (New Delhi: Penguin Books, 1991), pp. 20-21.

[63] Ghulam Hasnain, "Inside Jihad," *Time Magazine*, February 5, 2001, Vol. 157 No. 5, [online] http://www.time.com/time/asia/magazine/2001/0205_kashmirsb1.html (retrieved July 20, 2005).

[64] The Harkat-ul Ansar was listed as a terrorist organization by the U.S. in October 1997. The group changed its name to Harkat-ul-Mujahedin and continued to operate out of Pakistan. Later the group split into Lashkar-e-Toiba and Jaish-e-Mohammad. A number of groups were listed as terrorist organizations by Washington and Islamabad after Sep. 11, 2001, but continue operations under new names. See the 2006 Human Rights Watch report on abuses in Pakistan-administered Kashmir for details: "'With Friends Like These…': Human Rights Violations in Azad Kashmir," *A Human Rights Watch Report*, publication pending.

Faran, kidnapped six Western tourists in July 1995. One, a Norwegian, was beheaded. There is still no news of the others, who were British and U.S. citizens.[65]

The Indian government responded to the influx of foreign fighters into Jammu and Kashmir by expanding the army's role in the conflict. By 1993 the government had introduced the Rashtriya Rifles, an elite unit created specifically for counterinsurgency operations in Jammu and Kashmir.

In 1999, militants and Pakistani troops infiltrated into Indian territory, occupying areas in the Himalayas in the Kargil and Drass sectors of Jammu and Kashmir. India responded with force. The U.S. administration of President Bill Clinton, fearing an all-out war between the now nuclear-armed neighbors, stepped in to defuse the situation, getting Pakistani Prime Minister Nawaz Sharif to withdraw the intruders.[66] Soon after, Nawaz Sharif was deposed by his army chief, Gen. Pervez Musharraf, in a bloodless coup. India-Pakistan relations fell to an all-time low as violence peaked in Jammu and Kashmir.[67] In December 1999, militants hijacked an Indian plane to Kandahar, Afghanistan, and secured the release of three Pakistani militant leaders as ransom.[68] In December 2001, an attempted attack on the Indian parliament was foiled by security forces; six policemen and a gardener were killed in the exchange of fire, as were the five militants. Over twenty others, including some journalists, were injured.[69] India accused Islamabad of organizing the attack.[70] India began to deploy troops to the border, as did Pakistan. As both sides began to threaten nuclear conflict, the international community stepped in once again to pull both sides back from the brink.

After the attacks of September 11, 2001, Pakistan was successfully pressured by its main international supporter, the United States, to withdraw overt support to groups that were active in Afghanistan and Kashmir to demonstrate its commitment to the "war on terror." Militant infiltration decreased noticeably. According to Indian government reports, while 3,500 militants are believed to have crossed into Jammu and Kashmir in 2001, the number dipped to 237 in

[65] K. Santhanam et al, Institute of Defence Studies and Analyses, *Jihadis in Jammu and Kashmir* (New Delhi: Sage Publications, 2003), p. 29.

[66] Devin T. Hagerty, "US Policy and the Kashmir Dispute: Prospects for Resolution," in Ganguly, ed., *The Kashmir Question*.

[67] Pervez Hoodbhoy, "Nuclear Flashpoint: Quest for Safety," *South Asian Journal*, August-September 2003, [online] http://www.southasianmedia.net/Magazine/Journal/nuclearflashpoint.htm (retrieved July 21, 2005).

[68] "Indian Hijack Drama Over," BBC News, December 31, 1999, [online] http://news.bbc.co.uk/1/hi/world/south_asia/584729.stm (retrieved August 20, 2005).

[69] "Indian Parliament Attack Kills 12," BBC News, December 13, 2001, [online] http://news.bbc.co.uk/2/hi/world/south_asia/1707865.stm (retrieved April 4, 2006).

[70] "India Recalls Parliament Attack," BBC News, December 13, 2002, [online] http://news.bbc.co.uk/1/hi/world/south_asia/2572091.stm (retrieved April 4, 2006).

2005.[71] A slowing down of the peace process in 2006, however, has coincided with a gradual increase in attacks by militants, which the army blamed on increased infiltration.[72]

According to the Indian army, which does not necessarily provide reliable statistics, the proportion of foreigners among those killed had steadily increased until 2003—when it was reportedly as high as 70 percent—reflecting that the insurgency in Jammu and Kashmir was being run primarily by Pakistan-based groups, but then began to drop.[73] The army said that in 2004 only 374 of the 976 militants killed, or 38 percent, were foreigners.[74] In 2005, the number of militants killed had dropped to 178; fifty-nine of them were reportedly foreigners.[75] While these numbers have been disputed because the armed forces in Jammu and Kashmir have frequently killed civilians and later claimed they were foreign militants, they still likely reflect the trend of decreasing infiltration by non-Kashmiri fighters, as India has little incentive to under-report infiltration from Pakistan.

Recent developments

In 2002, India surprised most observers by holding the most credible elections in Jammu and Kashmir in many years, which militants tried to disrupt by threatening and killing several voters and candidates. Kashmiri nationalists and separatist groups, however, refused to participate, since the elections were held under Indian supervision. Their lack of participation, they argue, means that the election cannot be considered to be representative of the will of the people of Jammu and Kashmir.

A coalition government led by Mufti Mohammad Sayeed of the People's Democratic Party (PDP) replaced the Farooq Abdullah government of the National Conference. While in opposition, the PDP had campaigned vigorously against rampant state human rights violations, and the new state government under Sayeed took initial steps to respond to charges of human rights violations. In March 2003, it opened investigations into alleged "disappearances" and deaths in custody reported after it took office.[76] It also set up a cabinet committee to examine charges of tampering with evidence in an earlier case. In November 2005, according to the coalition agreement, Ghulam Nabi Azad of the Congress party replaced Sayeed as chief minister. A day after his appointment, the new chief minister once again called for an end to human rights violations and said that custodial killings (summary executions of detainees) would not be tolerated.[77]

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[71] Rajnish Sharma, "Tourists Throng J&K As Terror Dips," *The Hindustan Times*, March 16, 2006, p. 8.

[72] "Increase in Infiltration Across LOC: Army," *Press Trust of India*, July 27, 2006 [online] http://www.hindustantimes.com/news/181_1754237,0006.htm (retrieved July 29, 2006).

[73] "Terrorists Killed in J&K Up To August 17, 2005," [online] http://www.armyinkashmir.org/v2/statistical_facts/ft_actual_data.shtml (retrieved August 17, 2005).

[74] Ibid.

[75] "Army in Kashmir, Terrorists killed in J&K up to July 12, 2005," [online] http://www.armyinkashmir.org/v2/statistical_facts/ft_actual_data.shtml (retrieved July 20, 2005).

[76] U.S. State Department, Country Reports on Human Rights Practices: India, 2004 [online] http://www.state.gov/g/drl/rls/hrrpt/2004/41740.htm (retrieved July 20, 2005).

[77] "Abjure Human Rights Violations, Azad Tells Forces," *Press Trust of India*, November 4, 2005, [online] http://us.rediff.com/news/2005/nov/04azad.htm (retrieved February 7, 2005).

In November 2003, India and Pakistan announced a ceasefire at the Line of Control, ending almost a decade of relentless exchange of fire.[78] India's then Prime Minister Atal Bihari Vajpayee began peace talks with Pakistani president Musharraf of Pakistan. General elections in India in 2004 saw a change in government, with a Congress-led coalition coming to power. The new prime minister, Manmohan Singh, has held several meetings with General Musharraf. Both say they are committed to the peace process. The process has led to dialogue between Kashmiri separatist political representatives and the Indian government. Kashmiri leaders have also traveled to Pakistan for dialogue with Pakistan.

However, it is still a fragile process that is easily stalled because of deep distrust accompanied by intransigence by both parties. India insists that Pakistan should close down militant training camps and put an end to militants' infiltration into Jammu and Kashmir. Pakistan says that the camps have been shut down. However, it allowed militant groups to openly undertake relief work after the October 2005 earthquake, leading to fears of further militancy in the future.

After the earthquake, centered in Pakistan-administered Kashmir but also causing substantial damage in Jammu and Kashmir, India and Pakistan opened up five points on the Line of Control to deliver relief materials to the worst-affected Pakistan-held areas. Opened several weeks after the earthquake, and only under considerable Kashmiri and international pressure, the efficacy of these relief points remains unclear. However, the delay is explained by the concerns of Indian security officials about the revival of the militant groups who took over relief operations in Pakistan-administered Kashmir, and fears that donations for relief might be used instead to recruit and train more militants.[79] In Azad Kashmir, militant groups were the first on the scene dispensing relief goods and aid. These groups won much local appreciation for their rescue and relief efforts. This could not have been possible without logistical support from sections of Pakistan's intelligence apparatus. Seen in this context, the post-earthquake role of militant organizations actually underlines the continuity of the Pakistani military-militant relationship rather than an unexpected revival of militant fortunes in the aftermath of natural disaster. Very possibly, the Pakistani military sees the earthquake as an opportunity to craft a new role for the militant groups rather than attempting to disband them.

Jammu and Kashmir state remains a heavily militarized and armed area: according to the International Center for Peace Initiatives, there are about five hundred thousand army and paramilitary personnel deployed in Jammu and Kashmir and some seventy-nine thousand police.[80]

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[78] Khursheed Wani, "Shell Shocked Kashmir Welcomes India-Pakistan Ceasefire," *OneWorld South Asia*, November 26, 2003, http://southasia.oneworld.net/article/view/73659/1/95 (retrieved October 8, 2005).

[79] Ibid.

[80] International Center for Peace Initiatives, "Cost of Conflict Between India and Pakistan," p. 74.

III. Legal Causes of Abuses and Impunity

Several Kashmiris interviewed for this report said that while they understand that there is an ongoing conflict that can result in deaths and injuries, what they find particularly unbearable is the lack of accountability. Many Kashmiris who had been illegally detained or tortured, or those who suspect their relatives were victims of extrajudicial executions by troops, said they would not lodge complaints as that would only lead to harassment and would not result in justice because the government was unwilling to act against its troops.

This is because of the lack of commitment from India's political and security force leaders to hold officials and troops accountable, and a series of Indian laws that make it difficult or impossible to prosecute abusers in the employ of the state. This has led to a serious climate of impunity in Jammu and Kashmir.

Impunity occurs when perpetrators of human rights violations are not held accountable by the state for their actions.[81] Impunity can be divided into two types. *De facto* impunity takes place when the state fails to prosecute for lack of capacity or will, often for political reasons, such as state support for the abuses or to protect high-ranking officials or state institutions. *De facto* impunity has been rampant in Jammu and Kashmir state, where in even well-documented abuse cases there is no political will to prosecute. The second kind of impunity is *de jure* impunity, in which laws or regulations providing immunity or amnesty make it difficult or impossible to prosecute a perpetrator for human rights abuses. India has several such provisions in its laws, aimed at shielding its military personnel and civilian officials from legal accountability. Such laws are contrary to the right to a remedy and reparation for gross violations of international human rights law.[82] Both forms of impunity lead to more human rights violations and undermine faith in the government and security forces; *de jure* impunity sends a particularly negative signal to victims about state indifference and complicity in their suffering. This section sets out the various immunity provisions in Indian law that foster impunity, as well as laws that facilitate the excessive use of force.

[81] The U.N. Commission on Human Rights has defined impunity as the "impossibility, de jure or de facto, of bringing the perpetrators of violations to account - whether in criminal, civil, administrative or disciplinary proceedings - since they are not subject to any inquiry that might lead to their being accused, arrested, tried and, if found guilty, sentenced to appropriate penalties, and to making reparations to their victims." "Report of the independent expert to update the set of principles to combat impunity," of the U.N. Commission on Human Rights, E/CN.4/2005/102/Add.1, February 8, 2005, p. 6.

[82] See U.N. Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, G.A. Res. 60/147, U.N. Doc. A/RES/60/147 (December 16, 2005), Part VIII, "Access to Justice."

Preventing arrest: Section 45 of the Criminal Procedure Code

While the special status of Jammu and Kashmir State under the Indian constitution means that it has a separate criminal code called the Ranvir Penal Code, army and paramilitary forces deployed in the state by the federal government are protected by the immunity provisions of the Criminal Procedure Code of 1973 that apply to the rest of India.

Section 45 of the Criminal Procedure Code protects any member of the armed forces from arrest by civilian authorities for

> anything done or purported to be done by him in the discharge of his official duties except after obtaining the consent of the Central government.[83]

Preventing prosecution: Section 197 of the Criminal Procedure Code

Section 197(2) of the Criminal Procedure Code is a sweeping immunity provision that applies throughout India. It makes it mandatory for a civilian prosecutor to obtain permission from the federal government to initiate criminal proceedings against public servants, including the armed forces. The Indian government argues that this provision was intended to prevent frivolous lawsuits against government employees. Yet it has been used to shield human rights abusers from accountability in the courts, thereby degrading the right to the equal protection of the law and the right to an effective remedy.[84]

Section 197(2) has been used to block the trial in civilian courts of members of the armed forces alleged to be responsible for human rights abuses. It provides that:

> No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central government.[85]

Permission is seldom granted even when an investigation by local law enforcement officials has strong evidence that a member of the security forces is responsible for a human rights violation. In Kashmir, Mian Abdul Qayoom, president of the Jammu and Kashmir High Court Bar Association,

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[83] Section 45, Criminal Procedure Code, 1973, [online] http://www.indialawinfo.com/bareacts/crpc.html (retrieved June 6, 2005).

[84] See International Covenant on Civil and Political Rights (ICCPR) (1976), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), entered into force March 23, 1976, Arts. 26 and 2. India became a party to the ICCPR in 1979.

[85] Section 197 (2), Criminal Procedure Code, 1973, [online] http://www.indialawinfo.com/bareacts/crpc.html (retrieved June 14, 2005).

told Human Rights Watch that he estimated there to have been at least 150 cases since 1990 where the state government requested permission to prosecute members of the army or paramilitary forces for alleged human rights abuse but was refused or there was no response from the central government.[86] Amnesty International said in 2005 that the Jammu and Kashmir government had made almost three hundred requests for permission to prosecute, but none were granted.[87]

Human Rights Watch has obtained a copy of a standard letter issued by the government of India in response to requests for launching prosecutions against suspected perpetrators in federal armed forces, which merely states that "after due consideration of the facts and the circumstances of the case," the government has "decided not to grant the sanction to prosecute."[88]

In addition to facilitating impunity, laws in force in Jammu and Kashmir encourage the security forces to use excessive lethal force in dealing with law and order problems, to commit arbitrary arrests, and to detain suspected militants in violation of the right to a fair trial. These laws on their face are contrary to international policing standards, particularly the U.N. Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,[89] and violate the due process provisions of the International Covenant on Civil and Political Rights.[90]

The Jammu and Kashmir Disturbed Areas Act and Armed Forces (Jammu and Kashmir) Special Powers Act

On July 5, 1990, the Jammu and Kashmir state government promulgated the Jammu and Kashmir Disturbed Areas Act. At the time, Jammu and Kashmir was under governor's rule, so this act was the responsibility of the central government.

Under this act twelve districts of the state are deemed "disturbed."[91] In these areas, in sweeping language, the act empowers security forces personnel to use lethal force "against any person indulging in any act which may result in serious breach of public order, acting in contravention of any law or order for the time being in force, or the carrying of weapons."[92]

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[86] Human Rights Watch interview with Mian Abdul Qayoom, president, Jammu and Kashmir High Court Bar Association, Srinagar, October 11, 2004. Amnesty International said in 2005 that there were almost three hundred cases that were forwarded to the federal government by the Jammu and Kashmir government for permission to prosecute, and permission was granted in none of them. Amnesty International, "India: Briefing on The Armed Forces (Special Powers) Act, 1958," May 9, 2005, [online] http://web.amnesty.org/library/Index/ENGASA200252005?openandof=ENG-IND (retrieved February 14, 2006).

[87] Amnesty International, "Briefing on The Armed Forces (Special Powers) Act, 1958."

[88] Copy of a letter refusing permission to prosecute made available to Human Rights Watch by the High Court Bar Association, October 2004.

[89] Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, August 27 to September 7 1990, U.N. Doc. A/CONF.144/28/Rev.1 at 112 (1990).

[90] Arts. 9 & 14, ICCPR (1976).

[91] Annual Report 2004-2005, Ministry of Home Affairs, Government of India, p. 15.

[92] The Jammu and Kashmir Disturbed Areas Act (4), 1990.

The Armed Forces (Jammu and Kashmir) Special Powers Act is linked to the Disturbed Areas Act. Also promulgated in 1990, it authorizes the state government, governor, or central government to declare the whole or part of the state to be a "disturbed area" if it is determined to be in such a "disturbed and dangerous condition" that "the use of the armed forces in aid of the civil power" is necessary to prevent secessionist or terrorist acts.[93] The act empowers officers, including non-commissioned officers, to:

> [I]f he is of the opinion so to do for the maintenance of public order, giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable as being used as weapons or of firearms, ammunition or explosive substances[.][94]

Under Section 4(c) the armed forces are also empowered to "arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest."[95]

Both the Jammu and Kashmir Disturbed Areas Act and the Armed Forces Special Powers Act provide immunity to those exercising powers under the acts. In identical language, both state that:

> No prosecution, suit or other legal proceedings shall be instituted, except with previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.[96]

The immunity provisions in the Armed Forces (Jammu and Kashmir) Special Powers Act are used most often in Kashmir to prevent civilian prosecutors from prosecuting soldiers. When the state government asks the federal government for permission to prosecute those found responsible after police or magisterial inquiries, that permission is seldom granted.

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[93] Armed Forces (Jammu and Kashmir) Special Powers Act (3), 1990, [online] http://www.satp.org/satporgtp/countries/India/states/jandk/documents/actsandordinances/J&K_Specialpoweract.htm (retrieved June 6, 2005).

[94] Armed Forces (Jammu and Kashmir) Special Powers Act (4)(a).

[95] Armed Forces (Jammu and Kashmir) Special Powers Act (4)(c).

[96] Armed Forces (Jammu and Kashmir) Special Powers Act (7); The Jammu and Kashmir Disturbed Areas Act (6).

These laws are based on the national "Armed Forces Special Powers Act," which similarly provides immunity for soldiers.[97] The AFSPA has its roots in British colonial legislation dating back to the 19th century and is based on a 1942 colonial ordinance intended to suppress the Indian independence movement.[98]

Under Indian law, there is no clear definition of what constitutes a "dangerous or disturbed condition." Instead, this depends on the decision of government officials and is not subject to judicial review.[99] The extraordinary powers provided under these acts have led to a number of deaths in Jammu and Kashmir. In some cases cited in this report, troops have opened fire on civilians without warning, resulting in deaths and serious injury. No legal action has followed.

In November 2004, following protests in Manipur after the extrajudicial execution of a woman by security forces, the central government set up a five-member committee to review the Armed Forces Special Powers Act. Several domestic and international human rights organizations, including Human Rights Watch, had previously called for a review of the Act.

The review committee submitted its report to the Home Ministry on June 6, 2005.[100] While the report has still not been made public, some journalists reported that the committee recommended that the Act be repealed with some provisions incorporated into the Unlawful Activities (Prevention) Act, 1967.[101]

The Jammu and Kashmir Public Safety Act, 1978

The Jammu and Kashmir Public Safety Act (PSA), enacted in 1978 and amended in 1987 and 1990, also allows for immunity from prosecution, stating that:

> No suit, prosecution or any other legal proceeding shall lie against any person for anything done or intended to be done in good faith in pursuance of the provisions of this Act.[102]

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[97] Armed Forces Special Powers Act (6), 1958, [online] http://www.satp.org/satporgtp/countries/india/document/actandordinances/armed_special_powers_act_1958.html (retrieved February 14, 2006).

[98] Amnesty International, "Briefing on The Armed Forces (Special Powers) Act, 1958."

[99] Asian Center for Human Rights, "Review of AFPSA: Too Little, Too Late," November 3, 2004, [online] http://www.achrweb.org/Review/2004/45-04.html (retrieved February 14, 2006).

[100] "Armed Forces (Special Powers) Act Review Committee Submits Report," *Press Information Bureau*, Government of India, June 6, 2005, [online] http://pib.nic.in/release/rel_print_page.asp?relid=9607 (retrieved June 29, 2005).

[101] Shishir Gupta, "Scrap Armed Forces Law But Retain Bite: Panel to Center," *The Indian Express*, June 29, 2005, [online] http://www/indianexpress.com/print.php?content_id=73514 (retrieved June 29, 2005).

[102] Jammu and Kashmir Public Safety Act (22), 1978, [online] http://www.law.qub.ac.uk/humanrts/emergency/India/ind5.htm (retrieved June 15, 2005).

The PSA is an overly broad and vague preventive detention law that allows the government to keep an individual in detention without trial for up to two years to prevent them from "acting in any manner prejudicial to the security of the state or the maintenance of public order."[103] The PSA is discussed in detail below in Section V, on arbitrary detention.

Legal weaknesses in the Human Rights Protection Act

In 1993, responding to increasing criticism of human rights violations committed by its security forces, the Indian government established the National Human Rights Commission (NHRC) through the Human Rights Protection Act (HRPA).[104] While a major step forward, human rights activists and the NHRC itself say that there are several restrictions in the law that prevent the commission from performing a meaningful role in addressing impunity. The National Human Rights Commission has repeatedly said that certain provisions of the HRPA need to be re-examined, "as they were, in fact, tending to militate against the purposes of the Act itself."[105]

Under Section 19 of the HRPA, when the commission receives a complaint of a human rights violation by the armed forces, it cannot independently investigate the case but can only seek a report from the central government and make recommendations. Different governments of different political hues have consistently taken an uncompromising stance on Section 19. For example, although the HRPA was a Congress Party initiative, in 2002 the then ruling Bharatiya Janata Party-led coalition government also said that: "The present system of enquiry by the forces and punishment of the guilty persons has been working satisfactorily and, in view of this, it is felt that there is no need to change the procedure that has already been spelled out in the Protection of Human Rights Act, 1993 for dealing with the armed forces."[106]

The National Human Rights Commission has criticized the government's position on the issue, stating that its experience leads to a different conclusion:

> It is not the view of the Commission that the "present system" of inquiry into allegations of human rights violations by the armed forces is working satisfactorily. The Government is fully aware that the Section 19 of the Act, as at present worded, prevents the Commission from itself initiating an inquiry into, or investigating, the violation of human rights by the armed forces and that this provision has been widely criticized both at home and abroad. Yet, spokespersons of the Government, even at the highest levels, have frequently referred to the existence of the Commission and its powers under the Act as a

[103] Jammu and Kashmir Public Safety Act (8).

[104] Human Rights Act, 1993, [online] http://nhrc.nic.in/HRAct.htm (retrieved February 14, 2006).

[105] National Human Rights Commission, Annual Report, 2001-2002, Chapter 2, (2.5), p. 10.

[106] Memorandum of Action Taken, Government of India, April 2002, National Human Rights Commission, Annual Report, 2001-2002, p. 11.

> sure defence against the violation of human rights by the armed forces when allegations of such violations are brought against them. The Commission finds this tendency to use it to provide an alibi for possible wrong doing by the armed forces disturbing, to say the least.[107]

Section 19 is inconsistent with international standards for national human rights institutions. The "Paris Principles" on national human rights institutions provide that national institutions shall have the responsibility to submit to the government reports and opinions on "[a]ny situation of violation of human rights which it decides to take up."[108] A handbook on the establishment and operation of such institutions by the Office of the United Nations High Commissioner for Human Rights states:

> Designating the military as exempt from the complaints mechanism may also have a detrimental effect on an institution's effectiveness, particularly in view of the strength of the military in many States and its corresponding potential to violate human rights.[109]

Weaknesses in Military Court Jurisdiction

Indian law permits members of the Indian armed forces accused of crimes to be prosecuted by either the military or civilian justice systems. However, various statutes make trial by the civilian courts unlikely in practice. The Armed Forces Special Powers Act and other provisions noted above require prior approval of the central government for civilian prosecutions of military personnel.[110] And under the Army Act, the military may transfer a soldier from civilian to military custody for offenses that can be tried by a court martial.[111]

Available information shows scant evidence that the military is fully and effectively prosecuting soldiers and officers for abuses committed in Jammu and Kashmir. In May 2004, Chief of Army Staff Gen. N.C. Vij informed the National Human Rights Commission that 131 army personnel, including officers, had been punished for rights violations in Kashmir since 1990 (fewer than ten per year). These included sentences of two life imprisonments, fifty-nine "rigorous" imprisonments, and eleven instances of one year's imprisonment and dismissal.[112] However, to date the army has not

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[107] National Human Rights Commission, Annual Report, 2001-2002, Chapter 2 (2.8), p. 11.

[108] National institutions for the promotion and protection of human rights, G.A. res. 48/134, 48 U.N. GAOR Supp. (No. 49) at 252, U.N. Doc. A/48/49 (1993) ("Paris Principles"), Principle 3(c).

[109] U.N. Centre for Human Rights, National Human Rights Institutions, No. 4 (Geneva: United Nations, 1995), p. 29.

[110] Armed Forces Special Powers Act (6), 1958.

[111] Army Act, Section 125, Criminal Procedure Code (1973), Section 475, provides that military personnel held in civil custody who could be tried by both civilian and military courts will be delivered to the commanding officer for trial by court martial.

[112] National Human Rights Commission, "NHRC takes up Human Rights violations with the Chief of Army Staff," May 27, 2004.

publicly released details of any of these cases: no incidents described, no names of those sentenced, and no information on the crimes committed.[113]

The absence of a record of military prosecutions for serious abuses in Kashmir contradicts army chief Gen. J.J. Singh's assertion that "commanders at all levels have been directed to ensure that all instances of indiscipline are thoroughly investigated and the guilty brought to book without undue delay."[114] One high-profile case that highlights the military's failure to prosecute its own is the 2000 killing in Pathirabal of five persons whom the army falsely claimed were militants. Military responsibility for the deaths became evident in 2001 when it was conclusively determined that those killed were local villagers, not militants. In 2006, the civilian Central Bureau of Investigation filed criminal charges against five military officers for these killings: for more than five years military prosecutors either failed to fully investigate the case or were simply unwilling to bring charges against the officers, whose cases are now pending before civilian courts. Even now, the various procedural obstacles to prosecuting military personnel in civilian courts make a trial in this case uncertain.[115]

Courts martial in India can readily be subject to manipulation by commanding officers. The officer who convenes a court martial selects the panel from among the officers under their command. A senior military lawyer concluded that this selection process "makes the 'command influence' of the convening officer, on whose order the prosecution is launched, over the court-martial all too pervasive."[116] A retired military jurist likewise noted: "Frequently, the members of the court martial must look to the appointing officer for promotions, advantageous assignments and efficiency ratings; in short, for their future progress in the service." Court martial members "do not and cannot have the independence of jurors drawn from the general public or of civilian judges."[117] While these problems affect all military trials, whether for routine indiscipline or serious rights abuses, they invariably are exacerbated when the victim is an alleged militant or a civilian wrongfully suspected of militant activity.

Of particular concern is the absence of civilian control over India's military justice system. A genuinely independent and impartial judiciary must be separate from the executive branch of government.[118] Unlike the U.K. and U.S. military justice systems, in which court-martial

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[113] Ibid.

[114] "A Talk with the Chief: Gen. J.J. Singh's Views on Military Law," in *Military Law: Then, Now and Beyond* (New Delhi: Judge Advocate General's Department, 2005), p. 6.

[115] The military courts have largely remained impervious to outside judicial scrutiny. According to Col. Indra Sen Singh, the high courts, concerned about undermining military discipline by interfering in military affairs, have "generally adopted a 'hands off' attitude towards the [sic] military matters." Col. Indra Sen Singh, "Military Justice System: Re-inforcing the Confidence," in *Military Law: Then, Now and Beyond,* p. 231.

[116] Ibid., p. 235. Colonel Singh suggested that all members of the court martial be drawn from outside the jurisdiction of the convening authority.

[117] Col. Y.R. Sharma (retd), "Growth of Military Law," in *Military Law: Then, Now and Beyond,* p. 67.

[118] As the International Commission of Jurists has noted:

decisions can ultimately be appealed to a civilian court, Indian courts martial are purely a military affair. The retired military jurist considered Indian courts martial as "simply executive tribunals whose personnel are in the executive chain of command."[119] Even the Supreme Court's extraordinary appellate jurisdiction, the Special Leave Petition, does not extend to courts martial.[120] A 1999 report of the Law Commission of India recommended the creation of a civilian Armed Forces Appellate Tribunal, a call that has gone unheeded.[121] Ultimately the military justice system is problematic both for military defendants who feel they are being treated unfairly, and victims of abuses and their families who wish to see justice properly done.

> Military jurisdiction is often used as a means of escaping the control of the civilian authorities and of consolidating the military as a power within society, as well as a tool through which the military authorities can exert supremacy over civilians. The Human Rights committee has repeatedly stated that States must take steps to ensure that military forces are subject to civilian authority.

International Commission of Jurists, *Military jurisdiction and international law* (Geneva: 2004), p. 28 (citations omitted).

[119] Sharma, "Growth of Military Law," in *Military Law: Then, Now and Beyond,* p. 67.

[120] See Indian Constitution, Art. 136 (2). According to a lawyer at Naval headquarters, "The only way in which a civilian court could consider the findings of a court martial is by way of the writ of 'Certiorari,' 'Prohibition' or 'Mandamus' or 'Habeas Corpus.' Under the writ jurisdiction, however, the civil courts have a very limited authority to interfere with the findings of court martial." Capt. Rakesh Kumar Mehta, NM, "Need for a Court Martial Appellate Tribunal," in *Military Law: Then, Now and Beyond,* p. 197.

[121] Law Commission of India, 169th report on "Amendment of the Army, Navy and Air Force Acts (1999)," quoted in A.K. Upadhyay, "Recommendations of the Law Commission of India on Military Law," in *Military Law: Then, Now and Beyond*, p. 201. See also Mehta, "Need for a Court Martial Appellate Tribunal," in *Military Law: Then, Now and Beyond*, p. 197. ("In any democratic society there must be means available by which a convicted soldier can test outside the military legal system the legality of a judgment against him.")

IV. The Origins of Impunity: Failure of Accountability in Jammu and Kashmir Since the Start of the Conflict

Over the years there have been well known cases of government abuse that have had a great impact on public opinion in Jammu and Kashmir. Because of the abuses themselves and the very public failure of accountability for the military and paramilitary personnel, police and high-ranking officials responsible, these cases have served as a recruiting sergeant for the insurgency.

Many Kashmiris, and some officials in New Delhi, believe that the course of events in Jammu and Kashmir could have been much different if the Indian government had properly supervised its forces so that abuses did not happen; if when their forces did commit abuses the government had held its forces accountable in a public and credible manner; and if it had quickly established the principle that the law would apply equally to soldiers and police, as it applied to militants and civilians. It is widely viewed that the insurgency derived much of its strength and longevity from this failure by government.

Below are some of the many serious cases of human rights violations that have seared the public consciousness in Jammu and Kashmir since 1989. No matter how "old" these cases, the Indian government remains obligated to investigate and punish those responsible for serious violations of human rights and international humanitarian law.[122] Human Rights Watch believes that no cases since the beginning of the insurgency are too old for justice to take place, and no effort at accountability and reparations is too late to be meaningful to Kashmiris, especially to the victims and their families.

In each of the cases discussed below, stretching over a ten-year period from early 1990 to early 2000, members of the security forces deployed in Jammu and Kashmir were accused of unlawful killings. In some cases official inquiries were ordered, but in the end no credible action was taken against the individuals implicated. This, along with immunity provisions in Indian law, has conveyed the impression to the population that the government has condoned the abuses.

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[122] The Human Rights Committee, in its Concluding Observations to Argentina in 2000, stated that with respect to human rights violations during military rule, gross human rights violations "should be prosecutable for as long as necessary, with applicability as far back in time as necessary to bring their perpetrators to justice." Concluding observations of the Human Rights Committee: Argentina (Nov. 3, 2000), CCPR/CO/70/ARG, para. 9. See also the Convention against Torture, Arts. 4, 5 & 7 and other human rights treaties. The Human Rights Committee has stated that states are "under a duty to investigate thoroughly alleged violations of human rights, and in particular forced disappearances of persons and violations of the right to life, and to prosecute criminally, try and punish those held responsible for such violations." *Bautista de Arellana v. Colombia*, Communication No. 563/1993, U.N. Doc. CCPR/C/55/D/563/1993 (1995), para. 8.6.

Under international humanitarian law, states must investigate war crimes allegedly committed by their armed forces or on their territory and prosecute as appropriate. See International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law* (Cambridge: Cambridge Univ. Press, 2005), pp. 607-10.

The cases below are, of course, not the only serious incidents that have blotted the human and political landscape in Jammu and Kashmir in recent years. While these cases are illustrative, we believe that each, in its own way, serves as a milestone of the Indian government's failure to hold its security forces accountable. Atrocities by the militants during this period are not included, though more recent militant abuses are set out in Section VI.

A. Shootings at Gawakadal, Srinagar

Violence in Jammu and Kashmir erupted in November 1989, though signs of unrest had started almost a year earlier. After the kidnapping by the JKLF of Rubaiya Sayeed, daughter of India's Home Minister, in December 1989, the government decided to "get tough."[123] New Delhi appointed as governor Jagmohan, a Hafizabad-born (now in Pakistan) politician who was known as a forceful administrator, and who, as noted above, had held the post before.

"President's rule" is provided for under Article 356 of the Indian constitution.[124] This empowers the central government to dismiss a state legislature if the governor, a federal appointee, advises that governance of the state "cannot be carried on in accordance with the provisions of the constitution."[125]

Jagmohan was appointed governor despite opposition from the elected chief minister, Dr. Farooq Abdullah. In protest, the Abdullah government resigned. The imposition of governor's rule put New Delhi into direct confrontation with the Kashmiri insurgents.

Jagmohan was appointed on January 19, 1990. That night, in response to the kidnapping of Rubaiya Sayeed and other militant attacks, Indian security forces conducted warrantless and thus illegal house-to-house searches in Srinagar, hunting for illegal weapons or other evidence of support to the militants. They dragged many people out of their beds into the bitter cold. Many Kashmiris complained that they were beaten and abused.[126] Jagmohan maintains that he had nothing to do with the decision.[127]

The next morning, as word of the searches and beatings began to spread, people began to pour out into the streets of Srinagar. From the mosques, loudspeakers urged Kashmiris to come out and fight for *azaadi*, or freedom. Thousands of Kashmiris gathered to protest the actions of the security forces.[128]

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[123] Akbar, *Kashmir: Behind the Vale*, p. 218.
[124] See footnote 36.
[125] Constitution of India, [online] http://lawmin.nic.in/coi.htm (retrieved April 17, 2006).
[126] Puri, *Kashmir: Towards Insurgency*, p. 60.
[127] Jagmohan, *My Frozen Turbulence in Kashmir*, p.15.
[128] Akbar, *Kashmir: Behind the Vale*, p. 218

The state government declared a curfew, but few if any Kashmiris observed it.[129] It was early evening when one group of marchers reached the Gawakadal Bridge on Srinagar's Jhelum River. They were shouting slogans and some were pelting the soldiers with stones. Troops from the Central Reserve Police Force (CRPF) opened fire into the crowd. Eyewitnesses say the shooting was a brutal and excessive use of lethal force against demonstrators. Many demonstrators were shot from behind as they turned to run away.[130] Kashmiri news photographer Meraj-ud-din described the scene:

> When I reached Gawakadal, all I could see were the dead. I saw bodies of children, bodies of women, bodies of men…. Later they brought the bodies to the police compound. I saw them again. There I cried. I shouted, screamed. 'Don't do this to the people.' That day I saw everything.[131]

Human Rights Watch, in its 1991 report on the shootings, criticized the killings and concluded that the use of lethal force was not proportional to the threat.[132]

At least thirty-five people died. Many estimates put the toll near one hundred. Until then, this was the highest number of persons killed on a single day since the violence erupted in Jammu and Kashmir.[133] The killings drew international attention. The London based daily, the *Independent,* carried an interview with one of the survivors, a thirty-eight-year-old mechanical engineer called Farooq Ahmad, who worked for the government:

> I was just standing watching the procession of Muslims demonstrating against India. It was curfew time and there were CRPF on both sides of the lane. They should have given a warning, telling people to go back to their rooms. But there was no warning, so people thought the procession was allowed. Then there were two shots in the air, and more shots, shots and shots—people were falling down. I also fell down. Someone pushed me down. The CRPF took control of the area. There were a lot of dead and injured. But I was safe, no bullet. Then came somebody, they said I was still alive, and that fellow, an officer, came with a Bren gun, a light machine gun. He aimed at me and started firing.[134]

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[129] Joshi, *The Lost Rebellion*, p. 41.

[130] Asia Watch*, Kashmir Under Siege*, p. 27.

[131] Chindu Sreedharam's interview with photojournalist Meraj-ud-din, "A lensman's record of the vale of violence," in "Blood in the Snow: Ten Years of Conflict in Kashmir," December 11, 1999, [online] http://www.rediff.com/news/1999/dec/11blood.htm (retrieved May 10, 2005).

[132] Asia Watch, *Kashmir Under Siege*, p. 27.

[133] Puri, *Kashmir: Towards Insurgency*, p.61. There are other estimates that nearly one hundred people were killed; see Singh, *Kashmir: A Tragedy of Errors*.

[134] Tony Allen-Mills, "The Secret Massacre of Srinagar," *The Independent* (London), January 28, 1990. Several other foreign magazines and newspapers reported the incident. See also Victoria Schofield, *Kashmir in the Crossfire* (London: I.B. Tauris & Co Ltd., 1996) [online excerpts] http://www.kashmirpoint.com/Bookexerts.htm (retrieved May 26, 2005).

Farooq Ahmad survived. But few in Jammu and Kashmir have forgotten that incident. Human Rights Watch recently met with an eyewitness who recalled the events at Gawakadal.

> I remember that scene perfectly. There were so many people. I remember thinking that all of Srinagar must be out on the streets. They were shouting slogans and calling for freedom. There was a CRPF bunker just near the bridge. Suddenly the soldiers opened fire. It was machine-gun fire and all I could hear is the rat-a-tat sound. At that time, we were not used to the sound of firing like we are today. I think everyone was shocked. No one had expected the troops to start firing. Soon, there were people falling down all over the place. I remember the man standing next to me saying, 'I know I have been shot but I can't feel anything.' I looked at him. And then I saw his foot. There was a bullet stuck inside his shoe… All around people were groaning with pain. Everyone that could ran away. I stayed where I was in case they fired at me. I stood there for many hours. Finally, the police brought trucks and started taking the dead and wounded away. But they had been lying there for many hours before the trucks came. I remember that there were dogs sniffing at the bodies. I will never forget one sight. I saw a dog eating a human arm.[135]

The shooting at Gawakadal Bridge and the way the Indian government responded may have been the turning point in the rebellion. As Human Rights Watch said in a May 1991 report, "In the weeks that followed as security forces fired on crowds of marchers and as militants intensified their attacks against the police and those suspected of aiding them, Kashmir's civil war began in earnest."[136] Almost every day there were protests. Teachers, students, and government employees came out into the streets shouting slogans. At the same time, there were increased attacks from militants, now with a religious dimension. Hindu Kashmiris, called *pandits*, came under attack. Many were abducted or killed. Many received anonymous notes that were threatening and abusive.[137] Thousands of *pandits* began to flee the Muslim-majority Kashmir valley, relocating to squalid camps in Jammu and Delhi. At least three hundred thousand Kashmiri Hindus still remain displaced.[138]

The state administration, led by Jagmohan, sought to end the militancy and the mass protests through the increased use of force. Government forces fired live ammunition on crowds of unarmed demonstrators.[139] Round-the-clock curfews were imposed for days in major towns to

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[135] Human Rights Watch interview, name withheld, Srinagar, July 29, 2005.

[136] Asia Watch, *Kashmir Under Siege*, p. 14.

[137] Asia Watch, *Kashmir Under Siege*, pp. 147-153.

[138] Kanchan Gupta, "The Pandits: Dole and Despair," rediff.com, February 3, 2005, [online] http://www.rediff.com/news/2005/feb/04kanch.htm (retrieved February 16, 2006).

[139] Asia Watch, *Kashmir Under Siege*, p. 26.

prevent protests.[140] Paramilitary troops conducted large-scale searches, called "crackdowns" in Jammu and Kashmir. Residents were forced to gather outside while troops ransacked their belongings, looking for hidden weapons. Informers, in hoods, identified alleged militants to be taken into custody, who were then often tortured and sometimes killed.[141]

No known action was taken against any CRPF officials who ordered their forces to open fire at Gawakadal, or against the officers present during the shooting. [142] No public inquiry was ordered into the incident.[143] The police did file complaints against demonstrators who pelted stones at security forces, but they were not investigated. [144] Without an investigation into what exactly happened in Gawakadal, there will be no chance of holding those responsible accountable.[145]

The consequences of Gawakadal and the failure to hold the security forces accountable have been far reaching. Many young Kashmiris began to join the militants, whose popularity shot up. One man told Human Rights Watch that he and other parents watched helplessly as their sons enlisted with the militants: "Boys, as young as fourteen or fifteen, crossed the border and came back with guns. No one could stop them."[146]

The crackdowns also created greater schisms between the security forces and the public. Author and editor of the *Asian Age* newspaper, M.J. Akbar, summed up the feelings of many:

> January 19 became the catalyst which propelled into a mass upsurge. Young men from hundreds of homes crossed over into Pakistan-Occupied Kashmir to receive arms and training in insurrection… Pakistan came out in open support of secession, and for the first time, did not need to involve its regular troops in the confrontation. In Srinagar, each mosque became a citadel of fervor.[147]

B. Death of Mirwaiz Maulvi Mohammad Farooq

Mirwaiz Maulvi Mohammad Farooq was gunned down on May 21, 1990. The position of the "Mirwaiz," which is hereditary, is considered the most important religious authority in Srinagar. Farooq supported the independence movement led by the JKLF, although he had opposed the

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[140] Puri, *Kashmir: Towards Insurgency*, p. 62.

[141] Asia Watch, *Kashmir Under Siege*, p. 28.

[142] Human Rights Watch email interview with Parvez Imroz, Jammu and Kashmir Coalition of Civil Society, Srinagar, March 17, 2005.

[143] Puri, *Kashmir: Towards Insurgency*, p. 61.

[144] "Kashmir's First Blood," *The Indian Express*, May 1, 2005, [online] http://in.news.yahoo.com/050430/48/5yd80.html (retrieved June 10, 2005).

[145] Ibid.

[146] Human Rights Watch interview with the father of a JKLF militant who surrendered in 1994, Srinagar, July 30, 2005.

[147] Akbar, *Kashmir: Behind the Vale*, p. 219.

abduction of Rubaiya Sayeed. At the time of his death, he had also fallen out of favor with the more hardline Islamist groups, particularly the Hizb-ul-Mujahedin, which preferred accession of Jammu and Kashmir to Pakistan over independence.

According to police reports, on May 21 three persons visited Farooq at his home, claiming to have a prior appointment.[148] Farooq was alone when they went in to see him, while his secretary and guard waited outside. After about ten or fifteen minutes, the men waiting outside heard gun shots. They found Farooq critically injured with at least fifteen bullet wounds to the chest, head, stomach, and legs.[149] His assailants managed to escape.

As soon as they heard of the attack, people began to pour into the streets of Srinagar. Initially, public wrath was directed at members of the Hizb-ul-Mujahedin, which was suspected of the attack. The Hizb-ul-Mujahedin had by then begun a campaign of assassinating members of the old political order and Farooq's was a significant political voice.[150] After the attack, some of Farooq's followers began to surround and threaten to beat up supporters of the Hizb-ul-Mujahedin.[151]

Many Kashmiris gathered at the Sher-i-Kashmir Institute (a hospital) where Farooq had been taken, fatally wounded. At the news of his death, the crowd became restive and angry. A group snatched Maulvi Farooq's body and carried it in a procession towards the city. *India Today* magazine described what happened next:

> The crowd forcibly took the body of the Mirwaiz, and wound its way through the downtown areas of Srinagar where curfew had been imposed. On its route lay the Islamia College, which houses the headquarters of the 69th battalion of the CRPF. Seeing the mob heading towards them, the security forces panicked and opened fire, killing 57.[152]

There were varying accounts of the exact death toll. While some newspapers said that the death toll was fifty-seven, others reported that forty-seven were killed. Medical authorities certified thirty-five deaths.[153] Some press reports, however, put the toll at over one hundred.[154]

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[148] Report from J.N. Saxena, director general of Police to Jagmohan, governor of Jammu and Kashmir, reproduced in Jagmohan, *My Frozen Turbulence in Kashmir*, pp. 587-589.

[149] "Cleric Killed, 30 Mourners Slain in India," *Los Angeles Times*, May 21, 1990, p.2.

[150] Joshi, *The Lost Rebellion*, p. 72.

[151] David Devadas, "Will CRPF Overcome Memories of Excesses that Haunt Kashmiri Minds?" *The Tribune* (Chandigarh), November 23, 2003, [online] http://www/tribuneindia.com/2003/20031123/edit.htm#4 (retrieved June 1, 2005).

[152] Report from *India Today*, June 15, 1990, cited in Singh, *Kashmir: A Tragedy of Errors*, p. 158.

[153] Asia Watch, *Kashmir Under Siege*, p. 58.

[154] Akhila Raman, "India's Human Rights Record in J&K", November 2002, indiatogether.org, online] http://www.indiatogether.org/peace/kashmir/articles/indhr.htm (retrieved June 14, 2005); Puri, *Kashmir: Towards Insurgency*, p. 63.

The protestors were carrying Farooq's coffin from the hospital to his office. The CRPF post was along the route. According to Yusuf Jameel, a Kashmiri journalist who covered the events, he first heard what sounded like a single shot.

> It could have been militants or maybe a CRPF soldier guarding the camp fired his gun by mistake. But the CRPF reacted in panic. First the guards started firing blindly at the crowd and then the soldiers inside the camp thought there was fighting going on and came out and started firing as well.[155]

At least two bullets pierced the coffin.[156] Farooq's body fell out and was picked up by mourners, who replaced it in the coffin and ran with it to his office.[157]

J.N. Saxena, director general of police, however, gave a different account of the events in his official report:

> The processionists pelted stones at the CRPF and some militants opened fire with AK-47 rifles from three sides and attacked the CPRF picket… The CRPF had to return the fire and in the cross firing and stampede, several persons sustained injuries. The tally of fatal injuries is 24.[158]

Eyewitnesses told journalists that there had been no crossfire.[159] No troops were shot and injured or killed.

Jammu and Kashmir state police investigations later alleged that Farooq had been assassinated by a faction of the Hizb-ul-Mujahedin called the "Green Army," on the instructions of Pakistan's Inter Services Intelligence. The alleged assassin, Mohammad Abdullah Bangroo, was reportedly killed in an armed encounter a month later, on June 18, 1990.[160] Others allegedly involved in the plot continue to evade justice. In the irony that is Jammu and Kashmir, both Farooq and his alleged killer are buried in the same Martyr's graveyard in Srinagar.[161]

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[155] Human Rights Watch interview with Yusuf Jameel, journalist, Srinagar, August 3, 2005.

[156] Akbar, *Kashmir: Behind the Vale*, p. 219.

[157] "Cleric Killed, 30 Mourners Slain in India," *Los Angeles Times*, May 21, 1990.

[158] Report reproduced in Jagmohan, *My Frozen Turbulence in Kashmir*, p. 588.

[159] Human Rights Watch, *Kashmir Under Siege*, p. 58.

[160] Joshi, *The Lost Rebellion*, p. 74.

[161] Praveen Swami, "Mutfi's Turn," *Frontline*, Volume 19, Issue 23, [online] http://www.flonnet.com/fl1923/stories/2002112006200400.htm (retrieved July 16, 2005).

There was widespread criticism in the national and international press at the killing of unarmed mourners. Public rage shifted from the armed group blamed for the killing of Farooq to the government of India and the CRPF.[162]

One hundred and thirty-seven state government officials signed a letter to the governor expressing their anger over the mishandling of the situation and the indiscriminate attacks by security forces on unarmed civilians.[163] Ten senior officers also wrote a memorandum to the governor on May 28, 1990, expressing concern about the situation in Jammu and Kashmir and particularly about the incidents that had followed Maulvi Farooq's killing.

> As responsible administrators we are appalled by the lack of planning, forethought and consideration for the mourners that led to indiscriminate killing of large numbers of peaceful processionists by nervous and trigger happy security forces. It is apparent that these security forces did not get the benefit of guidance of their officers and that frantic wireless messages from officers of the State Police asking for instructions to be conveyed to the CRPF to desist from firing on the procession were not heeded which is indicative of a breakdown of the command and control structure of the law and order machinery.[164]

Tavleen Singh, a journalist, later wrote that some in the administration conceded that the killings were unwarranted:

> Later, a close aide of Jagmohan admitted to me that the whole thing had been a ghastly mistake and that men had acted without any proper instructions. They just went berserk and emptied all the bullets they had.[165]

While it appears that CRPF troops may have panicked and opened fire mistakenly, this may not relieve the commanders of legal responsibility for the deaths. Commanders have a duty to ensure that the soldiers under their command are trained in and understand the "rules of engagement," and that such rules of engagement are consistent with the requirements of international law. Poor soldiering is a command responsibility.

Governor Jagmohan later defended his term in Jammu and Kashmir in an 855-page book called *My Frozen Turbulence in Kashmi*r. Jagmohan absolves himself of responsibility for ordering that

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[162] David Devadas, "Will CRPF Overcome Memories of Excesses that Haunt Kashmiri Minds?" *The Tribune*, November 23, 2003, [online] http://www.tribuneindia.com/2003/20031123/edit.htm#4 (retrieved June 1, 2005).

[163] Puri, *Kashmir: Towards Insurg*ency, p. 63.

[164] Memorandum from senior officials to Governor Girish Saxena, May 28, 1990, as reproduced in Singh, *Kashmir: A Tragedy of Errors*, p. 156.

[165] Singh, *Kashmir: A Tragedy of Errors*, p. 159.

first crackdown on January 1990 that sparked the protests. He blames the state administration led by Dr. Farooq Abdullah, who had ordered the crackdown before his resignation, and says that Director General of Police J.N. Saxena should have taken responsibility for following the chief minister's orders.

> This would not only have been in accordance with the highest tradition of public service but would have denied my denigrators any opportunity to mount false propaganda against me. I was their main target… Saxena would not have lost anything. We would not have let him down, as his action was bona fide. Regrettably, he could not pick up enough moral courage.[166]

On Maulvi Farooq's death and the killings that followed, Jagmohan claimed that the events happened so quickly that he could not assume charge of the situation. He once again placed the blame on the police, particularly Additional Director General M.N. Sabharwal, who was at the hospital but left when trouble erupted. Jagmohan writes:

> Had he gone with the crowd or sent a strong contingent of police under the charge of a senior police officer to move with the crowd, the incident might have been averted, and if firing had to be resorted to by the [CRPF] to return the firing by the terrorists who were in the crowd, the casualties could be kept at a minimum. His conduct, to say the least, was highly irresponsible.[167]

Summarizing the events, he states that, "Unfortunately, in public affairs, you have to put up with the lesser evil to eliminate the greater evil, and events do not always take the direction that you intend."[168]

With a deteriorating human rights and political situation, it was critical that the government conduct a credible investigation and hold those responsible for the deaths accountable, at the very least with administrative sanctions. New Delhi forced Jagmohan to step down as Governor. This was a good first step, but not sufficient. If those with direct responsibility for the killings had also been held accountable, confidence within the community may have been restored to some degree.

But this did not happen. Jagmohan claims to have ordered an inquiry, but it is not clear that it ever took place.[169] No findings were ever made public. No one was ever held publicly accountable, except for Jagmohan. New Delhi failed to take credible action against those members of the CRPF or police who were responsible for the incident. If they had been fully

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[166] Jagmohan, *My Frozen Turbulence in Kashmir*, p. 16.
[167] Ibid. p. 590.
[168] Ibid. p. 18.
[169] Ibid. p. 589.

and fairly prosecuted and those convicted appropriately sentenced, perhaps public rage at the death of unarmed protestors might have been contained. Militant leaders even joked to journalists that Jagmohan had achieved what they could not in forty years.[170]

The incident further turned Kashmiris against the Indian government and its security forces. Many seemed to forget that Farooq had not been killed by the government. As Tavleen Singh writes, "Whoever killed Maulvi Farooq it was certainly not Jagmohan, but because of the manner in which he handled the aftermath of [Farooq's] murder it was easy for militant groups to blame it on him."[171]

C. The Beijbehara killings

On October 22, 1993, at least thirty-seven people were killed when personnel from the 74th Battalion Border Security Force (BSF) opened fire to disperse more than ten thousand people marching on the National Highway in Beijbehara in Jammu and Kashmir. The protestors were demonstrating against an earlier incident of firing on protestors near the Hazratbal shrine in Srinagar.[172] One eyewitness recalled the events to Human Rights Watch:

> The people had gathered on the National Highway which passes through Beijbehara town. It was like this even then, narrow, with shops on both sides of the road. There were thousands of people shouting slogans. But it was peaceful…. The BSF just opened fire without any warning. It was terrible. There were so many people lying on the ground. Others were running in panic…. This road, this very road, was full of blood.[173]

The government later said that thirty-seven persons had died.[174] The 1993 U.S. Department of State country report on human rights in India said, "Despite government claims that the security forces were ambushed by militants, only one BSF sub inspector was injured."[175]

The indiscriminate killing at Beijbehara is particularly important because it followed the September 1993 passage of the Human Rights Protection Act (see Section III above), adopted under the pressure of persistent allegations of human rights abuse in Jammu and Kashmir as well as in other areas of armed conflict in India. The law established the National Human Rights

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[170] Singh, *Kashmir: A Tragedy of Errors*, p. 134.

[171] Ibid. p. 161.

[172] "10 years on, Bejbehara massacre victims await 'healing touch,'" *Kashmir Times*, October 20, 2003, [online] http://kashmir.ahrchk.net/mainfile.php/news/200210/294/ (retrieved March 17, 2005).

[173] Human Rights Watch interview, name withheld, Beijbehara, August 1, 2005.

[174] "10 years on, Bejbehara massacre victims await 'healing touch,'" *Kashmir Times*, October 20, 2003, [online] http://kashmir.ahrchk.net/mainfile.php/news/200210/294/ (retrieved March 17, 2005).

[175] U.S. Department of State, "Country Reports on Human Rights Practices: India", January 31, 1994, [online] http://dosfan.lib.uic.edu/ERC/democracy/1993_hrp_report/93hrp_report_sasia/India.html (retrieved March 17, 2005).

Commission, which began operations in October 1993 and promptly took up the Beijbehara massacre. In proceedings that followed, it became apparent that the commission would not be able to challenge the armed forces' effective immunity from prosecution under Indian laws.

On November 1, 1993, the National Human Rights Commission, having on its own authority taken notice of the incident at Beijbehara, sent notices to the Ministry of Home Affairs, which controls the Border Security Force. The Ministry of Home Affairs sent to the NHRC a report on the incident based on the magisterial inquiry ordered by the state government as well as on the Staff Court of Inquiry ordered by the BSF.[176] This report stated that thirty-seven persons had died and seventy-three were injured in the shooting, and included evidence from six witnesses. The report also claimed that disciplinary proceedings had been initiated against fourteen BSF officials, but no details were provided.

On January 17, 1994, the National Human Rights Commission, based on the government report, made some strong recommendations that included immediate interim compensation to the victims' families and that, apart from disciplinary proceedings under the Border Security Force Act, there should be parallel criminal prosecution proceedings based on the magisterial inquiry.[177]

The government provided the standard 100,000 rupees [roughly U.S.$4,000 at that time] as compensation to the relatives of thirty-one civilians whom the local magistrate confirmed had been killed in the incident. Seventy-five others received compensations for injuries.[178] The National Human Rights Commission reported that the government, while indicating the extremely complex and serious situation on the ground, had assured the commission that it would ensure that:

> [A]ny kind of excesses in the operations being carried out by the Security Forces, even in the most difficult of the situations, is effectively curbed.[179]

However, on the NHRC recommendation that there should be parallel criminal prosecution, the government responded that the BSF Staff Court of Inquiry, Record of Evidence proceedings, "broadly correspond to committal proceedings in a criminal court."[180]

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[176] Under the Border Security Force Act and BSF Rules, offenses by members of the force are examined by the Staff Court of Inquiry and those found responsible face trial by a Security Force Court.

[177] National Human Rights Commission, Annual Report, 1993-94, Annexure V.

[178] Ibid.

[179] Ibid.

[180] Ibid.

There are no details available of the proceedings of the BSF Staff Court of Inquiry.[181] But nearly three years after the NHRC had called for action, on November 12, 1996, A.K. Tandon, then director general of the BSF, informed the NHRC that "a General Security Force Court trial was conducted in respect of the twelve BSF personnel involved in the said incident," but that results of the trial were "being withheld for the time being."[182]

On March 16, 1998, the NHRC, while acknowledging the BSF report, said that it wanted to review the proceedings of the General Security Force Court before taking any final position in the matter. The NHRC has the right to examine transcripts of trials to ensure that genuine attempts have been made to secure convictions. The commission directed the Ministry of Home Affairs to supply records of the proceedings. But the ministry refused, stating in a letter on May 5, 1998, the "inability of the Government of India to show records of the GSFC [General Security Force Court] to any authority other than those provided under the Border Security Force Act."[183]

The NHRC tried several times subsequently to insist that the government allow it to examine the proceedings of the trial, but no avail. In its annual report in 1998-1999, saying that it was "deeply disturbed," the NHRC noted that:

> The Commission is yet to satisfy itself that justice has fully been done in regard to the tragic loss of life that occurred in Bijbehara, in the State of Jammu & Kashmir, on 22 October 1993 in respect of which incident it had made specific recommendations…. The Commission is determined to see this case through to its logical conclusion. At the end of the year under reporting, it was awaiting the records of those proceedings and was contemplating moving a Writ Petition before the Supreme Court if it were denied full access to the records that it had sought.[184]

On February 8, 1999, the NHRC told the government to preserve all related documents and then appealed to the Supreme Court "to issue a writ… to make available to the petitioner the relevant records of the court martials conducted in respect of the armed forces personnel involved in the said incident."[185] The writ petition was later withdrawn by the NHRC, probably

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[181] Siddharth Varadarajan and Manoj Joshi, "BSF record: Guilty Are Seldom Punished," *The Times of India*, April 21, 2002, [online] http://timesofindia.indiatimes.com/articleshow/7503214.cms (retrieved October 30, 2004).

[182] Asian Center for Human Rights, "Holy Cows, Chained Watchdog and a Banana Republic," January 28, 2004, [online] http://www.achrweb.org/Review/2004/0504.htm (retrieved March 17, 2005).

[183] A.G. Noorani, "Audit of Human Rights," *Economic and Political Weekly*, 3-9 November 2001, Vol. XXXVI, No. 44; "Bijbehara Killings, India's NHRC: The Best Case is Quite the Worst" in "Commissions and Conflict: Briefing Papers on the Role of the National Human Rights Institutions in Conflict Situations", Asian Center for Human Rights, September 11, 2004, p. 27.

[184] National Human Rights Commission, Section 3.6, Annual Report, 1998-1999, [online] http://nhrc.nic.in/ (retrieved July 4, 2005).

[185] Ibid.

because the verdict would have gone against the commission due to the restrictions imposed under Section 19 of the Human Rights Protection Act, 1993 (see Section III above).[186]

The Border Security Force had initially claimed that it had taken action against the responsible officials, but the only available information about this concerns one sub-inspector who the BSF told the NHRC had been found not guilty.[187] According to press reports, all those charged with murder were acquitted by the General Security Force Court.[188]

When the NHRC took up the incident there was hope among many Kashmiris that those responsible would be brought to justice. But this outcome made it clear that the NHRC would have a limited role in investigating abuses by the armed forces and promoting prosecutions of military personnel. Impunity was the victor again.

D. The killing of Jalil Andrabi

The trussed-up body of Jalil Andrabi, a human rights lawyer, was found on the banks of the Jhelum river in Srinagar on March 27, 1996.

Andrabi had been detained for questioning on March 8, 1996. After he failed to come home, a habeas corpus petition was filed by the Jammu and Kashmir High Court Bar Association. When Andrabi's body was found nineteen days after he "disappeared," it was discovered that he had been shot in the head and his eyes gouged out.[189] He had been dead for at least a week when his corpse was found.

On August 13, 1996, the High Court directed the police and security forces to make joint efforts to arrest the suspected perpetrators. In late 1996, after hearing representations from a Special Investigation Team (SIT) looking into the case, the High Court noted "that functionaries of the Union of India have not been cooperating with the [SIT] in a proper manner."[190] On April 10, 1997, the SIT presented its initial findings to the High Court and said that Maj. Avtar Singh from

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[186] Asian Center for Human Rights, "Holy Cows, Chained Watchdog and a Banana Republic," ACHR Review, January 28, 2004, [online] http://www.achrweb.org/Review/2004/0504PF.htm (retrieved February 9, 2005). As described in Chapter III, under Section 19, the NHRC cannot independently investigate abuses committed by the armed forces. The NHRC has repeatedly demanded amendments to certain provisions of the HRPA, particularly of Section 19, which "has resulted in instances of a lack of accountability and indeed, opacity in respect of complaints relating to the violation of human rights by members of the armed forces." National Human Rights Commission, Annual Report, 2001-2002.

[187] South Asia Human Rights Documentation Center, Human Rights Features, "Justice And Accountability in Kashmir-Chasing the Mirage," April 24, 2000, [online] http://www.hri.ca/partners/sahrdc/hrfeatures/HRF19.html (retrieved July 2, 2005).

[188] Siddharth Varadarajan and Manoj Joshi, "BSF record: Guilty Are Seldom Punished," *The Times of India*, April 21, 2002, [online] http://timesofindia.indiatimes.com/articleshow/7503214.cms (retrieved October 30, 2004). "10 years on, Bejbehara massacre victims await 'healing touch,'" *Kashmir Times*, October 20, 2003, [online] http://kashmir.ahrchk.net/mainfile.php/news/200210/294/ (retrieved March 17, 2005).

[189] Human Rights Watch, "Behind the Kashmir Conflict."

[190] Amnesty International, "India: Impunity Must End in Jammu and Kashmir," April 2001, AI Index: ASA 20/023/2001, [online] http://web.amnesty.org/library/index/ENGASA200232001 (retrieved March 17, 2005).

the 103rd Unit of the Territorial Army[191] and some other soldiers under his command were responsible for the abduction and killing of Andrabi. The team told the court that they had not been able to arrest Major Singh because no one appeared to know his whereabouts.[192]

When the army was told to produce Major Singh, the army representative told the High Court that Singh had been with the army for only a limited period and that his term of service had been terminated. He was no longer in the army and therefore could not be produced by it.[193] The army representative also said that the major had not committed the crime in his official capacity and therefore the army as a whole could not be held responsible for his actions.[194]

According to the NHRC, the army refused to hand over the accused Major Singh to the Special Investigation Team.[195] The police team had also been told that Major Singh could not be prosecuted by civil courts because he was employed by the state and would be considered for court martial. Stating that the case was "a source of continuing embarrassment to the country," the NHRC noted that,

> [d]espite a notice having been served on the army to produce the officer of the army suspected to be involved in the abduction and subsequent death of Jalil Andrabi, this has not been done. The persistence of such a situation reflects extremely poorly on the conduct of those who are failing to cooperate in ensuring justice is done in this most serious case.[196]

The government of India has consistently failed to deliver justice in the Jalil Andrabi case. Soon after his murder, the government, in fact, chose to be defiant. In response to an Amnesty International report, the Indian government said in a September 1996 letter: "The allegations of [a] Government hand in the killing of human rights activists in J & K has been made earlier also. In all incidents of killings of so-called human rights activists, Government has made available clinching evidence showing they were targets of one or other militant organization, whose ideology did not match with theirs."[197]

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[191] The Territorial Army is part of the regular army and its role is to relieve regular army from static duties and assist civil administration. Territorial Army units have taken part in active combat including the Indo-Pakistan wars of 1965 and 1971, the Indo-China war in 1962 and the peacekeeping mission to Sri Lanka in the late 1980s. The Territorial Army has also been deployed in situations of internal conflict including operations in the northeast and in Punjab. For details, see [online] http://indianarmy.nic.in/arcar.htm (retrieved July 2, 2005).

[192] Amnesty International, "Impunity Must End in Jammu and Kashmir."

[193] Human Rights Watch interview with Arshid Andrabi, lawyer and brother of Jalil Andrabi, Srinagar, May 19, 2005.

[194] Amnesty International, "Submission to the Human Rights Committee Concerning the Application of the International Covenant on Civil and Political Rights," July 1997, [online] http://web.amnesty.org/library/Index/ENGASA200271997?open&of=ENG-IND (retrieved June 14, 2005).

[195] National Human Rights Commission, Complaints Before the Commission, Case of Jalil Andrabi, (Case No. 9/123/95-LD), Annual Report 2002-2003.

[196] National Human Rights Commission, Annual Report, 2001-2002, p. 29.

[197] Amnesty International, "Impunity Must End in Jammu and Kashmir."

However, when the Special Investigation Team handed in a report to the state government on October 11, 2000, it again blamed Maj. Avtar Singh, who had been posted for anti-terrorist operations in Rawalpora, Srinagar. On October 18, 2000, the High Court, based on the inquiry report, ordered the SIT to file charges including murder, and asked the commanding officer of Major Singh to provide all possible assistance in producing the accused before the court.

Several orders were issued to the army, requiring that the accused be produced before the court of the Chief Judicial Magistrate, which was hearing murder charges against Major Singh. On December 26, 2000, the magistrate, noting that the army authorities had repeatedly ignored requests to produce the suspect in court, presented the army with the option to try the suspect by court martial or in a civilian court. On January 22, 2001, the army sent a letter to the magistrate stating that Major Singh would be tried in a court martial.

The Jammu and Kashmir High Court Bar Association then submitted a petition to the High Court demanding that Major Singh be tried in a civilian court. The petition reminded the court of the failure to produce Major Singh before the judge. The High Court, acting on the petition, stayed the court martial.

In March 2001, the SIT submitted its final report to the High Court. The SIT had found during its investigations that Major Singh may have been involved in at least six other extrajudicial executions.[198]

The delays and failure of due process in this case reflect the government's failure to address impunity for the armed forces. Arshid Andrabi, brother of Jalil Andrabi, is also a lawyer and has been pursuing the case. He says that there is no option but to follow the rule of law, but the failure to arrest his brother's alleged killer reflects a breakdown in the judicial system.

> We are pursuing the case, but we have no hope at all. I have just returned from a hearing. Maj. Avtar Singh had still not been arrested. It was claimed that he cannot be found. It has been nine years and the man is still at large. Despite orders by the court, they have not bothered to arrest him… The army says that he retired two years ago, but even before that, the police knew where he was posted. They sent summons. He did not appear but still he was not arrested. It proves that there is some sort of connivance between the police and the army…. This man has been blamed for other killings as well. He has been questioned by the police. Why was he not detained then as is the rule for all those accused of murder?[199]

[198] "Jaleel Andrabi Murder Case; SIT submits final report," *Informative Missive*, Vol. 46, March 2001, p. 4.
[199] Human Rights Watch interview with Arshid Andrabi, Srinagar, May 19, 2005.

The failure of the government to prosecute those responsible for the murder of Jalil Andrabi is still cited in Jammu and Kashmir as an example of how New Delhi permits its troops to commit crimes with impunity. As Mian Abdul Qayoom, president of the Jammu and Kashmir High Court Bar Association, put it to Human Rights Watch:

> Jalil Andrabi was a well-known man. His case was taken up by so many organizations, including many in India, the NHRC, Amnesty International, and Human Rights Watch. Nothing has happened. His murderers are living in comfort on government salaries or pension. How then can there be justice in any other case?[200]

Indeed, as far back as July 1999 Human Rights Watch had recommended to the government of India that, "Major Avtar Singh of the 35th Rashtriya Rifles should be apprehended immediately and prosecuted for the March 1996 murder of human rights lawyer and JKLF member Jalil Andrabi."[201] The state's willingness and ability to resist even a police finding to prosecute a military officer reflects a pattern of impunity that has had broad-reaching consequences in Jammu and Kashmir.

E. Chattisinghpora massacre and ensuing killings

On March 20, 2000, on the eve of a visit by then U.S. President Bill Clinton to India, armed men in Indian army uniforms entered the village of Chattisinghpora in Anantnag district at night. The villagers, most of them Sikhs, were told that it was a routine investigation and identity check. Male residents were asked to come out of their homes with their identification cards. Once they were lined up outside, however, the gunmen opened fire, killing thirty-six and injuring several others. It was the first time in more than a decade of violence in Jammu and Kashmir that the Sikh community had come under attack.

The killings shocked many Kashmiris. India immediately blamed Pakistan and the Islamist groups based there. Others claimed that the killings were in fact carried out by Indian troops.[202] Generally, Kashmiris were willing to wait for a credible inquiry.[203]

In August 2000, the government said that it had evidence that the Pakistan-based Lashkar-e-Toiba was behind the killings.[204] In response to a notice from the National Human Rights

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[200] Human Rights Watch interview with Mian Abdul Qayoom, Srinagar, August 2, 2005.

[201] Human Rights Watch, "Behind the Kashmir Conflict."

[202] Celia W. Dugger, "Pall Cast by Sikh Slaying Settles Over Clinton Visit," *The New York Times*, March 22, 2000; Sonia Jabbar, "A Spring in Kashmir: First Hand Report from South Asia Citizen's Web," SACW, April 2000, [online] http://bridget.jatol.com/pipermail/sacw_insaf.net/2000/000613.html (retrieved May 26, 2005).

[203] Balraj Puri, "Aftermath of Chhitisinghpora Massacre of Sikh," [online] http://www.pucl.org/reports/JammuKashmir/chhitisinghpora.htm (retrieved April 20, 2005).

Commission, the director general of police of Jammu and Kashmir, Gurbachan Jagat, said a case had been registered and investigations were in progress. The commission said that according to information received from the government of India:

> Of the twenty accused persons identified in connection with the killing of 35 Sikhs, 6 were killed in subsequent encounters; 2 were further detained under the Public Safety Act and 12 were absconding. A charge sheet has been filed in the case on 13 November 2000. The report stated three Pakistani nationals belonging to Lashkar-e-Toiba had confessed their involvement in the killings.[205]

This was a partial representation of the facts. After the murders of the Sikhs, the government ordered an inquiry and combing operation to locate those responsible. On March 25, 2000, the security forces claimed that five militants responsible for the massacre had been killed in an armed encounter at Pathirabal. The encounter was later found to have been fabricated; the dead men were ordinary villagers. On April 3, 2000, security forces opened fire on a demonstration in Brakpora to protest the killing of the five villagers, this time killing eight civilians.

Pathirabal killings

On March 25, 2000, five days after the Chattisinghpora massacre, Farooq Khan, senior superintendent of police in Anantnag, claimed that security forces had killed the militants responsible for the killings in an operation in Pathirabal, Panchalthan. Describing the joint operations by the police led by Khan and the army's 7th Rashtriya Rifles led by Col. Ajay Saxena, Khan told journalists that assault rifles, grenades, and two wireless sets had been recovered from the militants who all belonged to the Abu Maaz unit of a foreign militant group.[206] They had been hiding inside a hut that later caught fire. Director General of Police Jagat said a member of the Hizb-ul-Mujahedin had provided information about the militant hideout. All of the militants were "probably foreigners," he said, adding: "It is certain that they were the killers."[207] The daily update for March 25, 2000, on an army website claims: "5 foreign terrorists (Harkat-ul-

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[204] "Two Main Accused in Chattisinghpora Arrested," *Press Trust of India*, August 31, 2000, [online] https://www.rediff.com/news/2000/aug/31jk.htm (retrieved April 6, 2006). The Ministry of External Affairs said that two Pakistani men were arrested in the case. One of them, Mohd. Suhail Malik of Sialkot, Pakistan, reportedly confessed to having been part of the group of militants that had put on army uniforms and carried liquor bottles to falsely give the impression that the Chattisinghpora massacre had been carried out by the Indian Army. The other militant, Zahid Hussain of Gujrnawalla, reportedly admitted that he was also part of the same militant group but did not take part in the killings. See [online] http://meaindia.nic.in/searchhome.htm (retrieved June 2, 2005).

[205] National Human Rights Commission, "Killing of 35 Members of Sikh Community in Anantnag District of Jammu & Kashmir by Militants", Case No. 206/9/1999-2000, Annual Report, 2000-2001, [online] http://www.nhrc.nic.in/ar00_01.htm (retrieved May 26, 2005).

[206] Praveen Swami, "The Massacre at Chattisinghpora," *Frontline*, Volume 17, Issue 07, April 1-14, 2000, [online] http://www.frontlineonnet.com/fl1707/17070340.htm (retrieved June 13, 2005). See also Farooq Khan's testimony as described in the Report of the Inquiry Commission led by Justice S.R. Pandian, October 27, 2000, p. 12.

[207] "Troops Kill 5 Rebels Linked to Massacre in Kashmir," *Chicago Tribune* reproducing *New York Times News Service*, March 26, 2000.

Mujahideen and Lashkar-e-Toiba group) killed. These terrorists were involved in the massacre of 36 innocent Sikhs on the night of 20 March."[208]

The army handed over the bodies to the police and filed a police report.[209] The bodies were badly mutilated, with three completely charred and another that had been decapitated. All of them were buried by the police.[210]

Meanwhile, a number of villagers had been abducted on March 24, 2000, from three different places in the area, and missing person complaints had been lodged at the local police station. After hearing about the killing of so-called militants, villagers went to the site of the killings, where they found some items of clothing belonging to two of the five missing men.[211] Local residents of the area insisted that those killed were not militants but the abducted men who had then been murdered in a fake encounter, and the bodies burned to prevent identification.[212] An army spokesman, however, said: "Genuine terrorists have been killed. Do not give much credence to these reports about a fake encounter. People are twisting facts."[213]

Refusing to believe the official version, the villagers held several protests. On April 1, 2000, the Chief Judicial Magistrate ordered Deputy Superintendent of Police Sheikh Abdul Rahman to investigate the matter to ascertain whether the dead men were civilians or armed gunmen. An inquiry was also launched into the disappearance of the five villagers. At the same time, the district magistrate ordered that the bodies be exhumed for identification.

The bodies were finally exhumed on April 6-7, 2000. Although badly burnt, relatives identified the bodies. However, the identification was not conclusive.[214] It was decided that DNA tests would be conducted to settle the issue. Meanwhile, all five bodies were handed over to the relatives for reburial pending a final identification from the forensics laboratories.[215]

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[208] "Army in Kashmir, Events in Jammu & Kashmir as on March 25, 2000," [online] http://www.armyinkashmir.org/updates/25032000.html (retrieved July 2, 2005).

[209] Praveen Swami, "In Search of the Truth," *Frontline*, Volume 19, Issue 07, March 30-April 12, 2002, [online] http://www.frontlineonnet.com/fl1907/19070320.htm (retrieved June 17, 2005).

[210] Report of the Inquiry Commission led by Justice S. R. Pandian, October 27, 2000.

[211] "Massacre Perpetrators Killed by Army were Ordinary People," *The Times of India*, March 31, 2000.

[212] Amnesty International said that: "Local observers, however, disbelieved the official account; they pointed out that if armed men hidden in a hut on a hilltop had indeed been involved in a gunfight as claimed by the authorities, they would have injured some of the security force personnel attacking them from the valley - but none was injured. Moreover, security forces could have exchanged fire until those trapped in the hut ran out of ammunition and then arrested them instead of using heavy weapons to blast the hut killing those inside." Amnesty International, "A Trail of Unlawful Killings in Jammu & Kashmir: Chattisinghpora and Aftermath," AI Index: ASA 20/024/2000, June 15, 2000, [online] http://web.amnesty.org/library/Index/engASA200242000 (retrieved June 14, 2005).

[213] "Massacre Perpetrators Killed by Army were Ordinary People," *The Times of India*, March 31, 2000.

[214] *Informative Missive*, July 2003, p. 20.

[215] Report of the Inquiry Commission led by Justice S.R. Pandian, October 27, 2000, p. 15.

Forensic samples were collected by Dr. Balbir Kaur and a team of forensic experts from a government medical college under the supervision of police officer Rahman and sent to the Centre for DNA Fingerprinting and Diagnostics in Hyderabad and to the Central Forensic Science Laboratory in Kolkatta. On February 26, 2001, the Hyderabad laboratory wrote to the police, saying that some of the samples were spurious because in one case samples supposed to be from a female relative were actually from a male, and in another case samples from an alleged female were in fact composed of the blood of two different men.[216] Fresh samples were gathered and sent by Dr. Kaur.[217]

Meanwhile, information about the spurious samples was leaked to the press.[218] On March 14, 2002, the National Human Rights Commission issued a notice to the government of Jammu and Kashmir about reports of tampering with the DNA testing, and called for an "up to date report of the action taken in this matter," stating that:

> In view of these media reports, which have not come as a surprise to the Commission because of the reservations it has had on the performance of the concerned public servants reported earlier to the Commission not being found very satisfactory, the Commission requires the Government of J & K to submit a comprehensive up to date report of the action taken in this matter together with that in contemplation to correctly identify the five deceased as well as the follow up action."[219]

Farooq Abdullah, then chief minister of Jammu and Kashmir, had already made a statement on March 8, 2002, in the state assembly, admitting that officials had tampered with the DNA samples. On March 15, he also ordered an inquiry headed by retired High Court Judge G. A. Kuchai, and promised that all those found responsible for tampering with evidence would be prosecuted and punished.[220] Dr. Kaur and five others were suspended, pending the Kuchai Commission report.[221]

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[216] Siddharth Varadarajan, "State of Discontent," *Newsline*, June 2002, [online] http://www.newsline.com.pk/NewsJune2002/cover3june.htm (retrieved March 15, 2005); Praveen Swami, "Outrage in Anantnag," *Frontline*, Volume 17, Issue 08, April 15-28, 2000, [online] http://www.frontlineonnet.com/fl1708/17080340.htm (retrieved June 13, 2005); Praveen Swami, "In Search of the Truth," *Frontline*, Volume 19, Issue 07, March 30-April 12, 2002, [online] http://www.frontlineonnet.com/fl1907/19070320.htm (retrieved June 14, 2005).

[217] Ibid.

[218] *The Times of India* reported on March 7, 2002, that forensic samples had been tampered with, creating a national furor, with the NHRC calling for immediate action. A Srinagar-based newspaper, *Al Safa*, had reported this earlier, but local Kashmir journals are not always considered credible and that report had been ignored. See Praveen Swami, "In Search of the Truth," *Frontline*, Volume 19, Issue 07, March 30-April 12, 2002, [online] http://www.frontlineonnet.com/fl1907/19070320.htm (retrieved June 13, 2005).

[219] "NHRC issues notice to the government of Jammu & Kashmir," National Human Rights Commission, [online] http://www.nhrc.nic.in/disparchive.asp?fno=149 (retrieved March 17, 2005).

[220] "Farooq Apologizes for DNA fudge," *The Times of India*, March 9, 2002, [online] http://timesofindia.indiatimes.com/articleshow/3202180.cms (retrieved June 14, 2005).

[221] Praveen Swami, "In Search of the Truth," *Frontline*, Volume 19, Issue 07, March 30-April 12, 2002, [online] http://www.frontlineonnet.com/fl1907/19070320.htm (retrieved June 14, 2005); Mukhtar Ahmad et al, "I Don't Need DNA Tests To Recognize My Son," *The Rediff Special*, March 12, 2002, [online] http://www.rediff.com/news/2002/mar/12spec.htm (retrieved August 20, 2005).

On July 16, 2002, Chief Minister Abdullah released a final report from the Central Forensic Science Laboratory in Kolkatta stating: "It has been clearly established that the deceased were not foreign terrorists as claimed by the forces who led the operations, but they were innocent civilians."[222]

The chief minister recommended an investigation by the Central Bureau of Investigation into the entire Pathirabal operation, "in view of the gravity of the offence as well as the attempt made by certain officials to destroy evidence."[223]

The commission under G.A. Kuchai submitted its report on December 12, 2002, but it was not made public.[224] According to press reports, the inquiry found that Senior Superintendent of Police Farooq Khan may have organized the manipulation of DNA samples, noting that he "might have managed behind the scene that blood samples collected turn fake by indirect methods."[225]

The Kuchai Commisison also questioned the conduct of Deputy Superintendent of Police Abdul Rahman, who had been responsible for organizing the collection of DNA samples from relatives of the killed men. The donors were not properly identified by the paramedical staff escorted by Rahman. The conduct of the police, the paramedical staff and the doctors, the commission found, "gave enough opportunity to fudge the material."[226]

In March 2003, a newly elected state government led by Mufti Mohammad Sayeed set up a three-member ministerial committee to consider the findings of the Kuchai Commission. The committee found that "only those persons related to the killings [of the five civilians] would be interested in the destruction or falsification of evidence."[227] Based on the committee recommendations, disciplinary action was ordered against Deputy Superintendent Rahman for subverting proper evidence gathering. Strong displeasure was conveyed to Dr. Balbir Kaur, who had headed the team of forensic experts for the government medical college that collected the samples, blaming them for "lack of proficiency and diligence."[228]

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[222] Nazir Masoodi, "DNA nails Pathribal Lie but Farooq Touches Raw Nerve," *The Indian Express*, July 17, 2002, [online] http://www.indianexpress.com/full_story.php?content_id=6156 (retrieved June 14, 2005).

[223] Shujaat Bukhari, "Security Forces Killed Civilians," *The Hindu*, July 17, 2002, [online] http://www.thehindu.com/2002/07/17/stories/2002071705451100.htm (retrieved June 1, 2005).

[224] National Human Rights Commission, Case Details of File Number: 206/9/1999-2000, [online] http://nhrc.nic.in/display.asp (retrieved July 4, 2005).

[225] "DNA Case Lands Mufti Government In Trouble," *The Times of India*, August 16, 2003, [online] http://jammu-kashmir.com/archives/archives2003/kashmir20030816d.html (retrieved August 20, 2005); "Pathribal victims get healing touch," *Informative Missive*, July 2003, p. 19.

[226] *Informative Missive*, July 2003, p. 20.

[227] Mukhtar Ahmad, "DNA Test Tamper Stick For Cops," *The Telegraph* (Calcutta), July 24, 2003, [online] http://www.telegraphindia.com/1030724/asp/nation/story_2195233.asp (retrieved July 14, 2005).

[228] "Fudging of DNA Samples: Police Official Suspended," *The Tribune* (Chandigarh), July 24, 2003, [online] http://www.tribuneindia.com/2003/20030725/j&k.htm#8 (retrieved February 16, 2006).

Senior Superintendent of Police Farooq Khan, a federal government employee and therefore beyond the jurisdiction of the state government, was suspended for his actions in Pathirabal. Assistant Sub Inspector Bashir Ahmad, who belonged to the Jammu and Kashmir state police, was dismissed from service.[229] Khan, who had earlier received the President's Police Medal for Gallantry, denied any involvement in the case.[230] He contested his suspension and was reinstated.[231]

However, many Kashmiris believe that Farooq Khan knows what happened, even if he did not take part in the faked armed encounter, and has therefore obstructed justice. They base their opinion on an earlier report of a commission headed by Justice S. R. Pandian set up to inquire into the Barakpora incident described below[232] which said that the security forces had deliberately obliterated evidence of the Pathirabal operation

> by completely charring three of the five bodies… and leaving one of the remaining with missing of the entire upper portion of the body over and above the chest including the head—all with a malafide intention of getting rid of even the last traces of physical identity and finally burying all the dead bodies in various places within a radius of 2 to 2 ½ km and far away from the scene of the alleged encounter.[233]

During inquiries by Justice Pandian, Senior Superintendent Farooq Khan said that the police could not be held responsible for the events at Pathirabal.[234] The operation in which the five villagers were killed, he said, was conducted by the army.[235] On questioning, he clarified that although the operation at Pathirabal had been conducted jointly by the police and the army, police representatives had "accompanied the Army, but [had] not necessarily [taken part] in the actual shoot out."[236] He said that although representatives of the police had been with the commandant of the unit, "Army operations are always led by their officers."[237]

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[229] Ibid.

[230] "DNA Case Lands Mufti Government In Trouble," *The Times of India*, August 13, 2003, [online] http://jammu-kashmir.com/archives/archives2003/kashmir20030816d.html (retrieved August 20, 2005).

[231] "CAT Quashes Suspension of Former Anantnag SSP," *The Hindustan Times*, November 2, 2004, [online] http://www.hindustantimes.com/2004/Nov/03/5922_1087272,0015002000020002.htm (retrieved August 20, 2005).

[232] See section on Barakpora firing, below.

[233] Justice S.R. Pandian, "One Man Commission of Inquiry Report on the Firing Event at Brakpora/Bulbul, Nowgam, (Anantnag) on April 3, 2000," Srinagar, October 27, 2000, p. 2.

[234] Amnesty International, "Impunity Must End in Jammu and Kashmir."

[235] "Army Killed Anantnag Vilagers, Ex-SP Tells Panel," *The Times of India*, September 1, 2000, [online] http://www.jammu-kashmir.com/archives/archives2000/kashmir20000901b.thml (retrieved June 14, 2005).

[236] Justice S. R. Pandian, Report of the Inquiry Commission, October 27, 2000, p. 12.

[237] "Army Killed Anantnag Vilagers, Ex-SP Tells Panel," *The Times of India*, September 1, 2000, [online] http://www.jammu-kashmir.com/archives/archives2000/kashmir20000901b.thml (retrieved June 14, 2005).

Khan, who had made the statement to the media claiming that five militants responsible for the Chattisinghpora massacre had been killed, told the inquiry commission that his statement was based on the briefing he had received from the army.[238] It is true that when there are joint operations by the police and the army, it is usually the army that is in command.

Assistant Sub Inspector Bashir Ahmad had told the commission that he had received a telephone call from a shopkeeper informing him of the presence of foreign militants in the neighborhood. Ahmad claimed that he was part of an operation led by the 7th Rashtriya Rifles and had fired twenty to twenty-five rounds of ammunition. Eventually, the firing stopped and he found charred bodies on the ground.[239] The state government decided to prosecute Ahmad for his role in the Pathirabal killings, in addition to terminating his services.[240]

In September 2005, the Central Bureau of Investigation, which had been asked to take over the investigation in February 2003, exonerated Senior Superintendent of Police Farooq Khan.[241]

While there have been investigations, albeit unsatisfactory, into the role of police in the events surrounding the Pathirabal killings, what had largely been ignored was that the army's Rashtriya Rifles had also been involved in the operation and, according to Superintendent Khan, had actually led it. As described above, an army spokesman had insisted that "genuine terrorists have been killed." The daily update for that day on the official website managed by the 15th Corps headquarters in Srinagar still claims that "5 AK rifles, 12 magazines with 44 grenade launcher attachments, 4 timer devices and 2 radio sets recovered."[242] Yet this information has been found to be false by government inquiry commissions.

A major development in the case occurred on May 11, 2006, when the Central Bureau of Investigation completed its investigations and filed murder charges against five army officers, Brig. Ajay Saxena, Lt. Col. Brajendra Pratap Singh, Maj. Saurabh Sinha, Maj. Amit Saxena and Subedar Idrees Khan, before the Chief Judicial Magistrate in Srinagar. Interestingly, the CBI took the position that filing these charges was not a violation of Section 197(2) of the Criminal Procedure Code (see Section III above), since these cases involved murder and could not be attributed to actions taken in the course of performing official duty. The CBI concluded that:

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[238] Justice S. R. Pandian, Report of the Inquiry Commission, October 27, 2000, p. 13.

[239] "Pathirabal Victims Get Healing Touch," *Informative Missive*, July 2003, p. 20.

[240] "Fudging of DNA Samples: Police Official Suspended," *The Tribune* (Chandigarh), July 24, 2003, [online] http://www.tribuneindia.com/2003/20030725/j&k.htm#8 (retrieved February 16, 2006).

[241] "SSP Suspended for Pathribal Killings Reinstated," *Press Trust of India*, September 15, 2005, [online] http://www.kashmirlive.com/full_story.php?content_id=54737&type=ei (retrieved May 27, 2006).

[242] "Army in Kashmir, Events in Jammu & Kashmir as on March 25, 2000," [online] http://www/armyinkashmir.org/updates/25032000.html (retrieved July 2, 2005).

> The army unit 7 Rashtriya Rifles (RR) which was then stationed in Anantnag came under tremendous psychological pressure and in order to show quick results these five Army personnel and their under command, whose identity could not be established, entered into a criminal conspiracy to pick up some innocent persons and stage manage an encounter to create and impression that the militants responsible for [the Chattisinghpora] killings had been neutralized.[243]

The CBI also said that the "accused showed fake recovery of arms and ammunition from the five deceased after obtaining signatures of two local civilians on blank papers and subsequently filling in details on a typewriter."[244]

The Chief Judicial Magistrate, after reading the charges, said on May 11, 2006 that the "accused persons were subject to military law," and directed the army to decide whether it wished to exercise the option of a court martial.[245] This is an inexplicable decision that undermines the principle of equality before the law and further entrenches the military as being above the law.

In Jammu and Kashmir, there are fears that the army will take charge of this case and process it through a court martial. Given the army's poor record in holding its soldiers accountable, and considering that the army had taken no internal disciplinary action until the charges were filed, it is unlikely that a military court can be trusted to deliver justice. Indeed, a CBI officer told the *Indian Express* that the army had not cooperated with the investigations, and that "[w]henever the CBI asked for files or documents, there was no response. It was exasperating."[246]

According to the *Indian Express*, Brig. Amit Saxena, one of the accused, has written a letter of protest to the director general of military operations saying that he and the other officers were being singled out for "harassment, ignominy, humiliation, agony and financial strain."[247] The army, in its response to the charges, filed a petition since the operation took place in an area notified as "disturbed," the officers were eligible for protections provided by the Armed Forces Special Powers (Jammu and Kashmir) Act. The army sought to quash the charges on the grounds that the CBI did not have prior permission from the federal government to file them. In its petition, the army claimed: "The incident in question occurred during the military operation conducted officially, with the full concurrence and knowledge of superior authorities. The said

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[243] Central Bureau of Investigation, "CBI Files Charges Against Four Commissioned and One JCO of 7 RR In the Pathribal Encounter Case," May 11, 2006, [online] http://cbi.nic.in/PressReleases/PRelease2006/p11_1May06.htm (retrieved May 17, 2006).

[244] Ibid.

[245] Riyaz Wani, "CBI Charges 5 Army Officers With Murder in Pathribal Case," *The Indian Express*, May 11, 2006, [online] http://www.expressindia.com/fullstory.php?newsid=67537 (retrieved May 17, 2006).

[246] Ibid.

[247] Ritu Sarin, "Blame J-K Cops, Not Us For Pathribal: Brigadier to DGMO," *The Indian Express*, May 14, 2006, [online] http://www/indianexpress.com/story/4462.html (retrieved May 17, 2006).

acts of encounter cannot be viewed as individual acts of the alleged accused persons because there was no motive or ill-will on their part and the entire military operation was launched in good faith to apprehend the terrorists involved in the Chittisinghpora massacre."[248]

In its response, the CBI responded that since this was not a genuine encounter, "The acts of the accused do not come under the purview of discharge of official duties as provided by the act."[249]

There was no decision from the court at the time of writing. Despite the seriousness of the charges against the five men, they have not been taken into custody.

The CBI's investigation and charges could be an important precedent, or simply a case in which political considerations carried more sway than legal ones. If the five accused were in fact responsible for the killings, are successfully prosecuted, and no other responsible senior officer or official is protected from prosecution, this case could prove to be a watershed in Jammu and Kashmir. But the decision of the magistrate to allow the army to handle the case through a court martial and the refusal of the army to cooperate with the CBI investigation indicate that this might be yet another missed opportunity to show Kashmiris that justice is possible for human rights violations and the law will be applied equally to all.

Most independent investigations by human rights groups have concluded that the Sikh villagers at Chattisinghpora were killed by militants. [250]

Barakpora killings

After the March 25, 2000 killing of the five alleged foreign militants in Pathirabal, villagers went to the site of the encounter. As described above, villagers immediately began a protest, insisting that the encounter was faked and that five innocent villagers had been killed. [251] They persisted in challenging the "encounter" and demanded that the bodies be exhumed, insisting that the police had picked up and "disappeared" ordinary citizens; their demands over the following few days led to the Chief Judicial Magistrate's offer to exhume the bodies.[252]

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[248] "Army Seeks to Quash Charges Against Men," *South Asian Media Net*, August 10, 2006 [online] http://www.southasianmedia.net/cnn.cfm?id=316392&category=Security&Country=INDIA (retrieved August 22, 2006).

[249] Ibid.

[250] For example Kamal Mitra Chenoy, in "Frameworks for Peace: A Symposium on Efforts to Broker Peace in Kashmir," said that: "About Chithisingpora, there is a widespread belief that the massacre of 35 Sikhs was carried out by the army itself. The group interviewed several survivors and residents in Chithisingpora, and though the witnesses were extremely wary, their statements clearly indicated that they suspected militants of being responsible. But the very fact that contrary perceptions are widespread, shows how much the security forces have alienated themselves from the very people they are supposed to protect." Kamal Mitra Chenoy, "Frameworks for Peace: A Symposium on Efforts to Broker Peace in Kashmir," December 2000, [online] http://www.india-seminar.com/2000/496/496%20report.htm (retrieved May 25, 2005).

[251] Amnesty International, "A Trail of Unlawful Killings in Jammu and Kashmir."

[252] "Fresh Probe Into Sikh Massacre," BBC News, November 1, 2000, [online] http://news.bbc.co.uk/1/hi/world/south_asia/1001479.stm (retrieved June 14, 2005).

On April 3, 2000, several hundred demonstrators set out on a march to the district headquarters in Anantnag to present a petition to the deputy commissioner to speed up the exhumation.[253] At a junction of three streets was the Brakpora Camp, composed of one building housing police personnel, and another the 54th Battalion of the Central Reserve Police Force, who were jointly involved in combating militancy in the area.[254]

The police and Central Police Reserve Force at the camp opened fire on the procession, killing eight people and injuring at least fifteen.[255] The police claimed that they had opened fire because the protesters had hurled stones at them and that some militants, posing as unarmed demonstrators, had fired on the military camp prompting return fire.[256] The police also blamed the deaths of unarmed protestors on militants, stating that those killed had been shot from behind,[257] a claim disputed by eyewitnesses.[258]

There were angry protests in the state assembly, with legislators insisting that those responsible for firing on the demonstration be punished. Chief Minister Farooq Abdullah, after visiting Brakpora, suspended several police officers implicated in the shooting and also ordered that three senior officers from the district, including the deputy inspector-general of police, senior superintendent of police and the deputy commissioner, be transferred.[259] He also promised a judicial inquiry.

Former High Court judge S.R. Pandian was asked to head the commission set up to investigate the police shooting.[260] His report, issued on October 27, 2000, concluded that:

> There can be no second opinion that the incident that had taken place in front of the SOG [Special Operations Group] and CRPF Camp at Brakpora/Bulbul Nowgam, Anantnag is nothing but a sort of butchery [by the troops] in which eight innocent persons had laid down their lives and 14 persons sustained injuries, some of them very seriously. The loss to life is irrevocable.[261]

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[253] Celia W. Dugger, "7 Villagers in Kashmir Slain During Anti-Police Protest," *The New York Times*, April 4, 2000. The Pandian Commission said that there were different accounts of the number of people in the procession. While some estimated it at six hundred to eight hundred, others said that there were over two thousand.

[254] Justice S. R. Pandian, Report of the Inquiry Commission, October 27, 2000, p. 21.

[255] Amnesty International, "Impunity Must End in Jammu and Kashmir."

[256] "Police Suspended Over Kashmir Deaths," BBC News, April 4, 2000, [online] http://news.bbc.co.uk/1/hi/world/south_asia/701016.stm (retrieved April 27, 2004).

[257] Celia W. Dugger, "7 Villagers in Kashmir Slain During Anti-Police Protest," *The New York Times*, April 4, 2000. In affidavits filed before the Pandian Commission, security officials claimed that they had initially fired in the air to disperse the crowd. Some people then attempted to snatch weapons from the troops. Shots were also fired by some marchers.

[258] In affidavits filed before the Pandian Commission, eyewitnesses said that police and CRPF officials came out of their bunkers outside the camp, blocked off the marchers from three sides and opened fire on the demonstration.

[259] "Police Suspended Over Kashmir Deaths," BBC News, April 4, 2000, [online] http://news.bbc.co.uk/1/hi/world/south_asia/701016.stm (retrieved April 27, 2004).

[260] "Fresh Probe into Sikh massacre," BBC News, [online] http://news.bbc.uk/1/world/south_asia/1001479.stm (retrieved September 19, 2004).

[261] Justice S. R. Pandian, Report on the Inquiry Commission, October 27, 2000, p.108.

Justice Pandian, who also examined the causes that led to the incident at Brakpora, said that its "direct root causes" were linked to the Chattisinghpora massacre and the faked encounter killings in Pathirabal.[262] His commission fixed responsibility on seven people: three policemen and four members of the CRPF.[263] Both officers in-charge, Ashok Kumar of the state police and R. P. Roy of the CRPF, were held responsible. The commission findings were unequivocal, stating that the shooting was "nothing short of an unwarranted brutal attack amounting to murder, attempt to murder and causing grievous and simple hurt, without any justification and authority."[264]

The Pandian Commission report was placed before the state cabinet on October 31, 2000. The Chief Minister Farooq Abdullah, accepting the findings, said that the cases relating to the four CRPF personnel would be forwarded to the central government for appropriate action.[265] Murder charges, he said, would be brought against the police personnel found responsible for the shooting.[266] Nearly six years on, the three policemen have yet to be arrested or charged. There is no information available about any action taken against CRPF personnel.

[262] Ibid. p. 103.

[263] Ibid. p. 104.

[264] Ibid. p. 104.

[265] The CRPF comes under the jurisdiction of the federal government in New Delhi. Complaints are investigated and prosecuted internally by the CRPF. The results are never made public. Criminal prosecution of CRPF personnel requires sanction from New Delhi.

[266] Amnesty International, "Impunity Must End in Jammu and Kashmir."

V. Recent Abuses and Continuing Impunity

> *"I have not seen any official being punished. And quite frankly, I don't even try to get them prosecuted. My priority is to get my clients released while they are still alive."*
>
> —Mian Abdul Qayoom, president of the Jammu and Kashmir High Court Bar Association, Srinagar[267]

Since 2002, government officials and senior military officers have made statements instructing the security forces that human rights abuses will not be tolerated. For example, the first statement from the Congress party's Ghulam Nabi Azad after his appointment as chief minister of Jammu and Kashmir on November 2, 2005 (as part of a rotation previously agreed with its coalition partner, the People's Democratic Party, or PDP), was that his government would not tolerate custodial killings by troops and police.[268] Perhaps more important, Gen. J.J. Singh, the Indian Chief of Army Staff, reportedly told his troops that such deaths would not be tolerated because they negated all the good work done by the army.[269] Perhaps most significantly, in May 2006, even Prime Minister Manmohan Singh told troops in Jammu and Kashmir, "It is possible and desirable that you should be firm but humane; effective and efficient; in control but unobtrusive." He added, "You must be steadfast in your commitment to human rights and there should be zero tolerance for custodial deaths."[270]

These are important messages that, if translated into action, could make a major difference in the human rights situation and help improve public trust in the government and security forces.

Since the 2002 state elections that threw out the administration of Farooq Abdullah's National Conference party and brought PDP leader Mufti Mohammad Sayeed to power as chief minister, there have been some improvements on the ground. The number of new "disappearances" has significantly decreased; according to the Association of the Parents of Disappeared Persons they have dropped from eighty-one in 2003 to eighteen in 2005. The systematic use of warrantless searches as part of cordon-and-search operations for militants has been reduced. With a reduction in random grenade or sniper attacks by militants upon security posts, and perhaps because of better human rights training, the practice of storming neighborhoods after such

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[267] Human Rights Watch interview with Mian Abdul Qayoom, president of the Jammu and Kashmir Bar Association, Srinagar, October 12, 2004.

[268] Ahmed Ali Fayyaz, "No Custodial Killing, No Acts of Terror Will be Tolerated," *The Daily Excelsior*, November 2, 2005, [online] http://www.dailyexcelsior.com/web1/05nov03/body.htm (retrieved February 6, 2006).

[269] Muzamil Jameel, "Custody Deaths: Army Chief Sends Tough Message to Officers," *The Indian Express*, February 10, 2006.

[270] "Manmohan Singh Makes Veiled Offer at Kashmir Peace Talks," Reuters, May 25, 2006, [online] http://in.news.yahoo.com/060524/137/64ig9.html (retrieved May 29, 2006).

attacks, setting fire to buildings, and randomly beating up residents has also decreased. This shows that political commitment can make a difference.

Yet the army and paramilitaries are not under control of the civilian authorities in Srinagar. As the security forces continue to try to crush the insurgency—and without a clear and unqualified commitment to reform from the leadership of the national government, the army, and the paramilitaries—serious abuses such as killings, "disappearances," torture, and arbitrary and illegal detentions continue.

Alarmingly, the prevalence of impunity continues. Most alleged cases of abuse are not investigated. In the rare instances when they are, Human Rights Watch can find no cases resulting in public prosecutions or convictions of soldiers, paramilitaries, or police.[271] Disciplinary measures within the Indian army, the CRPF, the BSF, or the police are also rare and lacking in transparency. In March 2006, Chief Minister Ghulam Nabi Azad told the Jammu and Kashmir assembly that since the insurgency began disciplinary action had been taken against 134 army personnel, seventy-nine members of the Border Security Force, and sixty policemen.[272] However, the government has not provided any details, such as the nature of the crime, the name of the victim, the name of the accused, or dates, calling into question whether these cases really exist and, if they do, whether they have anything to do with human rights abuses or are just cases of ordinary crimes such as theft or corruption, or disciplinary problems such as fistfights or breaking of internal rules.

In short, Indian security forces continue to hide behind the shield of immunity provisions in Indian law and the lack of political will in New Delhi to address the critical human rights situation in Jammu and Kashmir.

In this chapter we list only cases after the November 2002 election of a state government that came to power promising improvements in the human rights situation. We believe that these cases require a thorough and independent investigation leading to appropriate prosecutions or disciplinary action. The police and other law enforcement authorities must act on their own to investigate serious abuses, and not simply wait for complaints from family members. Formal complaints are neither required nor often forthcoming because, as many families told Human Rights Watch, they are afraid or believe it is pointless.

These cases illustrate the scope of continuing abuses and the need for the government to fulfill its obligations under international law to fully investigate and prosecute serious violations of

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[271] Human Rights Watch wrote to the army, Border Security Force, Central Reserve Police Force, the central government, and the state government asking for detailed information of any such prosecution or conviction. As of July 31, 2006, we have received no response from any of these agencies.

[272] "Handwara Killings: Azad Orders Judicial Probe," *The Tribune*, (Chandigarh), March 1, 2006, [online] http://www.tribuneindia.com/2006/20060302/J&k.htm#1 (retrieved May 23, 2006). Chief Minister Azad said that 134 army personnel had been punished as of May 2006, which means that even according to the government, only three prosecutions took place since the 2004 report to the NHRC. See footnote 112.

human rights. The government further must provide for the right to a remedy and reparations for the victims and their families, regardless of their status as militants or innocent civilians. It is also hoped that the human tragedies brought to light by these accounts will provide additional impetus for genuine government action.

A. Killings

> *"These people are like trained killer dogs. Once unleashed, it is difficult to keep them in check."*
>
> —Senior police official speaking to Human Rights Watch about security forces operating in Kashmir[273]

The most alarming human rights problem in Jammu and Kashmir remains the high number of unlawful killings by security forces.[274] During fighting between government forces and militants, the laws of war—specifically common article 3 to the 1949 Geneva Conventions and customary laws of war—apply. The laws of war prohibit attacks on civilians and attacks that do not discriminate between civilians and valid military targets. Civilians have been victims of fighting in which they were shot in the crossfire, but they have also been subjected to laws of war violations in which the security forces did not take all feasible precautions to distinguish between civilians and militants. The security forces have then often sought to claim that those shot were militants or civilians who died in crossfire.

Provoking the greatest local outcry have been cases of faked "encounter killings." As in 2000 at Pathirabal (see Section IV above), in these cases the security forces are alleged to have fabricated a story about having killed a "militant" in self-defense or in battle when in fact the person was executed in custody.[275] Common article 3 prohibits at all times murder, torture and other ill-treatment of civilians and captured combatants. Summary or extrajudicial executions also violate the right to life under international human rights law. According to Indian officials who spoke to Human Rights Watch on condition of anonymity, faked encounter killings are more likely to happen if a suspected militant is identified as a Pakistani, or as an important militant leader who might be a security risk if kept in jail, either because he might indoctrinate other prisoners or because there is a perceived danger of hostage-taking to secure his release. The case of the

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[273] Human Rights Watch interview with a police official in New Delhi, name withheld, October 2004.

[274] "Extrajudicial Killings in Jammu and Kashmir Since November 2002," Public Commission on Human Rights, Srinagar, says there were at least 127 cases of killings by security forces between the November 2002 elections and January 2006. Copy on file with Human Rights Watch.

[275] Informative Missive, a Kashmiri human rights journal, notes: "Unfortunately, there is no mechanism to establish the veracity of the army claims and most of the killings of these 'foreign militants' go unabated in the remote and inaccessible areas….Normally, the police are empowered to conduct the investigations but in Kashmir they are incapable to investigate into the allegations and counter allegations." "Unveil The Truth," Informative Missive, August 2003, [online] http://geocities.com/informativemissive/august.html (retrieved September 25, 2004).

hijacking of an Indian Airlines plane from Kathmandu to Kandahar in 1999 to secure the release of Pakistani militants is often cited.[276]

In 2001, the U.S. government wrote:

> Kashmiri separatist groups maintain that many such "encounters" are faked and that suspected militants offering no resistance are executed summarily by security forces. Statements by senior police and army officials confirm that the security forces are under instructions to kill foreign militants, rather than attempt to capture them alive. Human rights groups allege that this particularly is true in the case of security force encounters with non-Kashmiri militants who cross into Jammu and Kashmir illegally.[277]

So pervasive is the problem of faked encounters—not just in Jammu and Kashmir, but in other parts of India where security forces are engaged in containing crime or insurgencies—that the National Human Rights Commission has issued guidelines on investigating such incidents and punishing those making false claims.[278] As Parvez Imroz, president of the Public Commission on Human Rights (a nongovernmental organization), says:

> There are a number of cases where we believe disappeared persons have been killed in faked encounters. In fact, there are cases pending in the High Court but the judiciary has not been particularly productive, merely directing the state or police to investigate. Of course, despite court orders, the progress in such investigations is always slow.[279]

Such fake encounter killings might even be encouraged by the military command structure through decorations, gallantry citations or promotions of personnel credited for the death of

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[276] In December 1999, an Indian Airlines plane was hijacked from Kathmandu, Nepal, and eventually landed in Kandahar, Afghanistan. The hijackers killed one passenger by slitting his throat and threatened to murder others. The Indian government eventually released three Pakistani militant leaders from custody. The Taliban were in power in Afghanistan at the time and did not make any attempt to arrest or prosecute the militants: The hijackers and the released militants all walked away free. The three militants went back to Pakistan and held public meetings. One of them, Ahmed Omar Sayeed Sheikh, was later indicted in the murder of journalist Daniel Pearl. "Indian Hijack Drama Over," BBC News, December 31, 1999, [online] http://news.bbc.co.uk/1/hi/world/south_asia/584729.stm (retrieved August 20, 2005).

[277] U.S. State Department, Country Reports on Human Rights Practices, India, 2001, [online] http://www.state.gov/g/drl/rls/hrrpt/2000/sa/717.htm (retrieved June 3, 2005).

[278] National Human Rights Commission, "Procedure to be followed in all cases of encounters in its directions on complaint No.234 (1 to 6)/93-94," March 29, 1997.

[279] Human Rights Watch email interview with Parvez Imroz, President, Jammu and Kashmir Coalition of Civil Society, January 19, 2006.

militants. Such incentives may lead to abuses.[280] Maj. Gen. V.K. Singh, a retired officer, has written in an essay in *Military Law: Then, Now and Beyond*:

> Units involved in counter insurgency operations may fall to the temptations to show results, which in simple terms, translates into kills. Every dead militant is a feather in the cap of the commanding officer, leading to rewards such as decorations and unit citations. As a result, there is a danger that the Army units may begin to emulate the Police, and start staging "encounters." It may be recalled that Mr KPS Gill used similar tactics to curb militancy in Punjab, when he was the [director general of police]. The Army was often co-opted in these operations, and learned the techniques at close hand.[281]

Officials routinely talk publicly about the "elimination of terrorists," in language that may contribute to a sense among security forces that they have an assurance of not being held accountable for illegal acts of violence. For instance, in an interview with the *Hindu*, Chief Minister Ghulam Nabi Azad said that "those who come from across the border and indulge in killings of innocent people should not expect any mercy or concession. Our bullet is going to get those who are killing innocent people… and we are not going to budge even an inch from this position."[282]

The circumstances around allegedly faked encounter killings are often in dispute. For instance, on July 5, 2005, Hizb-ul-Mujahedin commander Ghulam Mohiuddin Dar was, according to the army, ambushed and killed in an armed encounter. The army said it had prior information that he was in the neighborhood. Dar's supporters, on the other hand, say that he was arrested by members of the Rashtriya Rifles when he was bathing in a stream around noon, taken into custody, and shot about five hours later in what troops falsely claim to have been an armed encounter in a forest.[283] Human Rights Watch has been unable to verify either version of this incident. This is why credible, independent investigations are needed. Protection of witnesses is critical.

Another recent example of a disputed case is the death of Abdul Wali Khatana, Maulvi Mohammad Farooq, and Mohammad Farooq in Batgund Heepora village on January 17, 2006. Villagers told the Public Commission on Human Rights that the three men, who were associated with a local *madrassah*

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[280] In May 2004, the Indian government admitted that troops from the Indian army had made false claims about an entirely fictitious 2003 encounter with Pakistani soldiers to win accolades. Maj. Surinder Singh was found guilty of faking the armed exchange by an army court. Major Singh blamed his senior officers. "Army Major Seeks Fair Trial in Fake Encounter Scam," ANI, May 11, 2004, [online] http://in.new.yahoo.com/040511/139/2d0xo.html (retrieved February 8, 2006).

[281] Maj Gen V.K. Singh (retd), "Discipline, Morality & Professional Integrity in the Indian Army," in *Military Law: Then, Now and Beyond,* pp. 30-31.

[282] Vinaj Kumar, "Efficiency Has Become the Hallmark Of Our Governance: Ghulam Nabi Azad," *The Hindu*, January 5, 2006, [online] http://www.thehindu.com/2006/01/05/stories/2006010505781100.htm (retrieved February 10, 2006).

[283] "In Custody Say Mourners; Army says in Ambush," Informative Missive, July 2005, p. 7.

(Islamic school), were taken into custody four days earlier and later executed.[284] The army said that the men were members of the Hizb-ul-Mujahedin and were killed in an ambush. According to army spokesman Col. V.K. Batra, Khatana had indeed been called for questioning by the 7th Rashtriya Rifles, but he left the army camp and went underground. According to the army the three militants were killed after an exchange of fire; a pistol and two rifles were allegedly recovered from the militants.[285] The villagers refused to accept this version and held protest demonstrations until district authorities promised an inquiry.[286]

Two other cases investigated by Human Rights Watch are illustrative. According to an army report filed with the police, Mohammad Ibrahim Dar and Ishfaq Ahmad Rather were killed by the 2nd Rashtriya Rifles in Lawaypora in Srinagar in an armed encounter on September 29, 2005.[287] Relatives of Mohammad Ibrahim, a Hizb-ul-Mujahedin commander, insisted that he had been arrested and then killed in a faked encounter. [288] So did the brother of Ishfaq Ahmad, another Hizb-ul-Mujahedin commander who was allegedly killed in the same encounter.[289] It is difficult, as in most such cases, to establish exactly what happened, but Salima Ganai, Mohammad Ibrahim's sister, said that when his body was handed over to the family, it bore signs of torture.

> It was obvious to us that my brother had been tortured and then killed in a faked encounter. He had bullet wounds. But there were also cuts on his hands, between his fingers and on his wrists. There were these marks on his face that looked like cigarette burns. It seems to me that they killed him with great cruelty.[290]

While they want to know what happened to their brothers, both Salima Ganai and Ishfaq Ahmad's brother, Altaf Ahmad, told Human Rights Watch that they did not believe a fair investigation was possible into the deaths.

Protests often occur when a local Kashmiri is killed. The official response usually is to offer an oral assurance of an inquiry, though these rarely happen. If such inquiries do take place, the findings are seldom made public. According to the Public Commission on Human Rights, of the seventy-three inquiries ordered since the new government was elected in November 2002 and up

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[284] Custodial Killings and Extrajudicial Executions Since November 2, 2005, Public Commission on Human Rights, copy on file with Human Rights Watch.

[285] "5 Civilians, Captain Hurt in Kupwara Shootout," *The Daily Excelsior*, January 18, 2006, [online] http://www.dailyexcelsior.com/web1/06jan19/new.html (retrieved February 10, 2006).

[286] Ibid.

[287] Praveen Swami, "Ibrahim Dar, Architect of Srinagar Terror Offensive Shot Dead," *The Hindu*, September 30, 2005, [online] http://www.jammu-kashmir.com/archives2005/ kashmir20050930c.html (retrieved March 6, 2006).

[288] Human Rights Watch interview with Salima Ganai, Srinagar, February 25, 2006.

[289] Human Rights Watch interview with Altaf Ahmad Dar, Srinagar, February 25, 2006.

[290] Ibid.

to December 2005, there is information available in only six cases.[291] If any action is taken against those found responsible, that too is rarely made public. Human Rights Watch could find no instances in which there was a public prosecution leading to a conviction of those alleged to be responsible for faked encounter killings in Jammu and Kashmir.

In some cases the photograph of a missing Kashmiri turns up in the newspaper or police station as that of a dead "foreign militant" killed in an encounter. In such cases (some of which are described below), the family of the deceased may file a complaint or appeal for exhumation of the body to identify the victim and hold proper burial ceremonies. Frequently, however, the victims of extrajudicial execution by the security forces are suspected militants who are genuinely from Pakistan.[292] When the individual is from Pakistan and has no relatives in Jammu and Kashmir state, complaints are rarely filed.

In this section we also discuss cases in which troops opened fire on people they believed mistakenly to be militants. In an interview with Human Rights Watch, the army spokesman in Srinagar classified these cases as an "error of judgment," as opposed to deliberate murder, which he said would be an "error of intention."[293] However, errors of judgment occur too frequently in Jammu and Kashmir, where special laws such as the Armed Forces (Jammu and Kashmir) Special Powers Act provide troops with extraordinary powers to shoot to kill. For example, on February 23, 2006, even as the prime minister convened a discussion with Kashmiri groups to try and develop a consensus to end the conflict, in Handwara, four boys, one of them just eight years old, were shot dead by the army.[294] The Kashmir valley erupted in rage, refusing to accept the army's claim that the boys had died in crossfire. A judicial probe was belatedly ordered, but many Kashmiris have little faith in it. Instead, they fear that impunity will prevail.

International human rights standards call for a "thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions," including cases where complaints by relatives or other reliable reports suggest death in such circumstances.[295] The Indian government's investigative practices do not meet accepted international standards in alleged extrajudicial killings, including the right of the deceased's family to be informed and have

[291] Public Commission on Human Rights, Srinagar, February 10, 2006.

[292] In September 2002, Time magazine reported how three Pakistani militants interviewed while in custody were later reported by the army to have been killed in an armed encounter. Meenakshi Ganguly, "Three the Very Hard Way," Time, September 16, 2002, [online] http://www/time.com/time/asia/magazine/0,13675,501020923-351277,00.html (retrieved July 20, 2005).

[293] Human Rights Watch interview with Col. V.K. Batra, army spokesman, Srinagar, August 4, 2005.

[294] Shujaat Bukhari, "Four Boys Killed in Shootout," *The Hindu*, February 23, 2006, [online] http://www.hindu.com/2006/02/23/stories/2006022306091200.htm (retrieved March 7, 2006).

[295] Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, adopted by the U.N. Economic and Social Council on May 24, 1989, in resolution 1989/65 and endorsed by the U.N. General Assembly on December 15, 1989, in resolution 44/162, principle 9.

access to the investigation, and for the publication of a report "within a reasonable period of time" on the scope and findings of the investigation.[296]

Killing of three youths in Vilgam, Kupwara, July 24, 2005

Bilal Ahmed Sheikh, Shabir Ahmed Shah, Wasim Ahmed Wani, and Manzoor Ahmed Shah were attending the wedding festivities of Manzoor Ahmed's elder brother. Drummers had been brought in and the four teenagers danced all evening. Close to midnight, they slipped out and walked a short distance to the outskirts of the village, where hidden from disapproving adults, they lit a cigarette.

The groom, Farooq Ahmed Shah, remembers the sudden sound of gunfire. Everyone was shocked. Earlier, the groom's family had gone to the army camp near the village, invited troops to the wedding and informed them formally that the festivities would go on late into the night. He wondered why the army was conducting operations so close to the village.

As soon as the firing stopped, the villagers scurried home to safety. The parents of the youths worried about their sons, but assumed that they had decided to stay with a friend. At about 4 a.m. soldiers arrived at the home of Farooq Ahmed Shah. "They said my brother had been injured and asked my father to come with them to the hospital."[297]

The villagers began to gather. By then, the other youths had already been discovered as missing. At around 9:30 a.m., the village headman returned with some soldiers and told the villagers that the army had opened fire, claiming to have mistaken the four teenagers for militants. Three of them, Bilal Ahmed, Shabir Ahmed, and Wasim Ahmed, had been killed. Manzoor Ahmed was in hospital with critical injuries.[298]

The army apologized for the incident and offered 300,000 rupees (U.S.$6,500) in compensation for each of the three deaths. In an interview with Human Rights Watch soon after the incident, the army spokesman in Srinagar said there would be an inquiry: "We have to learn from this incident. We are already in the process of reviewing our operating procedures. We will see who was in charge and if there was scope for the commander to exercise restraint."[299]

After the inquiry, according to the same spokesman, the soldier who had opened fire received a warning, but the details have not been publicized. The spokesman told us, "But you must try and

[296] Ibid. principles 16 & 17.
[297] Human Rights Watch interview with Farooq Ahmed Shah, Vilgam, July 28, 2005.
[298] Human Rights Watch interview with Aijaz Ahmed Wani, brother of Wasim Ahmed Wani, Vilgam, July 28, 2005.
[299] Human Rights Watch interview with Col. V.K. Batra, Srinagar, August 4, 2005.

understand the difficulties of our troops during such operations. We found that there had been two militant ambushes in the area earlier. In both cases, there were army casualties while the militants escaped. The men made an honest mistake when they opened fire this time. They did not expect the boys to be hiding and smoking."[300]

The mother of Bilal Ahmad Sheikh, one of the three Kashmiri teenagers mistakenly shot and killed by Indian Army soldiers in Vilgam, weeps days after the shooting. The three boys had stepped outside a wedding reception to smoke cigarettes when Indian Army soldiers mistook them for Islamist militants, even though the soldiers were informed of the village festivities. Villagers are required to carry flashlights or lanterns after sunset when walking outdoors in the Kashmir valley, but the boys were not carrying either. The Indian Army has apologized and offered compensation to the families.
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Killing of Parvez Ahmad Dar, Kangan, Pulwama, July 20, 2005

Just four days before the incident at Vilgam, sixteen-year-old Parvez Ahmad Dar went with his father and uncle to open irrigation channels into their paddy field in Kangan village. Water is in short supply and villagers take turns to use the precious resource. While returning, Parvez Ahmad fell behind his father and uncle, who walked ahead carrying an oil lantern, a rule at night in rural Jammu and Kashmir to distinguish villagers from militants, who tend to use flashlights. According to Kabir Ahmad Dar, the victim's uncle:

> We heard firing and we went into a neighbor's hut for safety. We did not know where the boy was, but we thought he must have run to the village. At 6 a.m. the army said there was a crackdown and called everyone outside. There was a major with the soldiers and he said there had been crossfiring. We said there was no

[300] Human Rights Watch interview with Col. V.K. Batra, Srinagar, February 28, 2006.

> crossfire. The firing had come from only one side…. We wanted to go search for my nephew who was not in the village. The major refused to let us go…. He said that my nephew was a militant and had been shot while running away. When we started shouting then he finally admitted that a child had been killed by mistake.[301]

The villagers ran to the field and found Parvez Ahmad lying there. He had been shot in the back. The villagers insist that the troops had opened fire without provocation. But Lt. Gen. S.S. Dhillon, the commanding officer of the 15th Corps, said that Parvez Ahmad was killed in "retaliatory fire" and that there was "a big difference between the July 20 and July 24 incidents."[302] An inquiry was promised after protests by the villagers, but if it actually took place the results have not been made public.

Mohammad Ismail Dar describes the death of his brother, Mohammad Ramzan, who was mistaken for a militant and shot in an army ambush. The family received compensation for the killing. © 2005 Robert Nickelsberg

Killing of Mohammad Ramzan Dar, Gundipora, Budgam, June 6, 2005

According to his family, Mohammad Ramzan Dar suffered from a psychological disorder and was therefore unfit for regular jobs. The village had appointed him caretaker of the local mosque, to help support his family. Mohammad Ramzan woke as usual at 3:30 a.m. on June 6, 2005, so that he could be in the mosque in time to call to morning prayers. Many of the villagers

[301] Human Rights Watch interview with Kabir Ahmad Dar, Pulwama, July 30, 2005.

[302] "Court of Inquiry into Kupwara Firing," The Tribune (Chandigarh), July 26, 2005, [online] http://www.tribuneindia.com/2005/20050727/j&k.htm#1 (retrieved February 13, 2006).

woke up soon after because they heard gunfire. As is usual, everyone stayed inside as long as the firing continued so that they would not be caught in crossfire.

In the morning there was no call to prayer, but some of the villagers went to the mosque on time. Outside the mosque, they found the body of Mohammad Ramzan. He had been shot in the head and chest. After villagers protested, police and district authorities promised an inquiry. According to Mohammad Ismail Dar, brother of Mohammad Ramzan, the authorities later said that the killing was a mistake:

> We were told that the 34th Rashtriya Rifles had planned an ambush in the area. My brother was not right in the head and he used to talk to himself. The soldiers heard voices and opened fire thinking that there were militants near the mosque.[303]

The family received compensation. Mohammad Ismail Dar noted the connection between the wide powers of the security forces to use lethal force and the tragedies that ensued:

> I am willing to believe that this incident was a mistake. But how can the army go around shooting people like this? These mistakes should not happen. It is because, in Kashmir, the army can shoot whom they like.[304]

Killing of Zulfiqar Ali Khan, Mohammad Rafiq Mattal and Feroz Ahmad Bhat, April 21, 2005

Zulfiqar Ali Khan left his home in Galiban village around noon on April 21, 2005, after walking his daughter to school. He went to Baramulla town, about fifteen kilometers away, to talk to his father's doctor and run some errands related to his apple trade. Around 4 p.m. he met a neighbor who was also in Baramulla and said that he was soon heading back home. Meanwhile, he had bought vegetables and, meeting a local constable, sent the bag of vegetables back home with him because the constable was going back to the village immediately.

Later that day, according to a report lodged by the army with the police, Zulfiqar Ali Khan crossed the Line of Control into Pakistan-administered Kashmir, and then back again that night into Jammu and Kashmir state with other militants. The report alleged that they were intercepted and killed in an armed encounter near the Choroonda post in Uri, about sixty kilometers from Baramulla town.

Zulfiqar Ali Khan's family say that the army is lying. His father, Sardar Kabir Ahmed Khan, says that villagers near Choroonda told him that they saw a car with darkened windows drive past at

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[303] Human Rights Watch interview with Mohammad Ismail Dar, Narwora, July 30, 2005.
[304] Ibid.

around 7 p.m. Soon afterwards they heard shots. Sardar Kabir Khan believes that the security forces abducted two other men, Mohammad Rafiq Mattal and Feroz Ahmad Bhat, before picking up Zulfiqar Ali from Baramulla, drove to Choroonda, and then made them walk near the border and opened fire, killing them. Sardar Kabir Khan asks some basic questions:

> How, between 4 p.m. and midnight can someone go across the border, meet up with militants, and come back? There are so many soldiers in the area. None of them could see him? My son had been injured in a bomb blast attack some weeks before he died. He could not walk very well. Yet, we are supposed to believe he just strolled across a heavily mined border which is fenced and guarded. And lastly, you should have seen my son's body. His boots were polished. His clothes were ironed. This, even though he had allegedly trekked across the border. Twice. I think it is obvious. My son was murdered.[305]

Zulfiqar Ali Khan had been arrested for militancy in 1994, detained for four years, and released in 1998. Since then, his father says, Zulfiqar Ali Khan had stopped his association with militants. According to Zulfiqar Ali Khan's brother in law, Fayaz Ahmad: "[Zulfiqar] was not really interested in militancy even earlier. But his father was a politician associated with the Congress and National Conference. Militants wanted to kill him. At that time, the militants were here all the time. His sons used to associate with the militants so that they would not kill their father."[306]

Zulfiqar Ali's younger brother, Firdaus Ali Khan, was killed by the army in 1993. Their father said sadly:

> The army came to his shop and said, "You have been feeding militants." Then they walked him down the hill, shot him and walked away. At that time, there was no choice but to feed militants. They had guns. Also, they used to threaten to kill me. But the army brutally killed my boy. Now, they have killed my older son. My home is now empty.[307]

According to the army, Zulfiqar Ali was a guide who helped militants cross the Line of Control. The army claims that on April 21, 2005, he deliberately sent vegetables home with the village constable to establish his presence in Baramulla town. Then he quickly drove up to the village

[305] Human Rights Watch interview with Sardar Kabir Ahmad Khan, victim's father, Galibagh village, Baramulla, February 28, 2006.
[306] Human Rights Watch interview with Fayaz Ahmad, victim's brother-in-law, Galibagh village, Baramulla, February 28, 2006.
[307] Human Rights Watch interview with Sardar Kabir Ahmad Khan, February 28, 2006.

near the border and crept across. At night, he was coming back with a group of militants when he was killed in an armed exchange.[308]

Disputing this version of events, Sardar Kabir Ahmad Khan demands to know why his son died:

> I want them to tell me why they killed him. Why they lied and said he had come from Pakistan. Why do they have to kill?… I think they took my son into custody in Baramulla and then killed him in a faked encounter in the border. I don't understand this. If they really thought my son was a militant, they could have jailed him. Why kill him? His killers should be punished.[309]

Three other men were killed in the same encounter in which Zulfiqar Ali was killed. Their relatives also insisted to Human Rights Watch that the men had been killed in a faked encounter. One of the men, Feroz Ahmad Bhat, had been identified by the army as a Pakistani militant and buried. His father, Habibullah Bhat, recognized his son from a police photograph of the corpse and sought an exhumation. He said that, "At the police station, they said that the army had delivered the bodies of militants killed at the border. They said that only one was a Kashmiri. The others were Pakistani and had already been buried. They showed us the picture of the dead Pakistani militants. I identified my son from the picture."[310] Habibullah Bhat said he tried to file a police complaint so that these deaths could be properly investigated, but was refused. "At the police station they say they cannot file a report because my son was a militant and killed in an encounter. They say that I have no case for complaint."[311]

Killing of Nazir Ahmad Dar, December 29, 2004

The Border Security Force stopped a bus at a checkpost in Kharpora village on the morning of December 29, 2004. As is usual, the passengers were asked to disembark for routine checking. Two militants traveling in the bus opened fire. One soldier was injured. Other soldiers at the checkpost opened fire in response. In the exchange of fire one militant was killed while the other escaped.

According to Nazir Ahmad Dar's brother-in-law, also called Nazir Ahmad Dar, when villagers heard the gunshots, they ran away in fright. Nazir Ahmad and his neighbors began to run as well. As they passed the road where the bus had been stopped, a stray bullet hit Nazir Ahmad in the leg. He still continued to limp to safety. He was stopped by BSF guards who were checking identity cards to ensure that the escaped militant was not hiding among the villagers. When

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[308] Human Rights Watch interview with Vijay Batra, army spokesman, Srinagar, February 28, 2006.
[309] Ibid.
[310] Human Rights Watch interview with Habibullah Bhat, Srinagar, February 26, 2006.
[311] Ibid.

Nazir Ahmad arrived, he too pulled out his identity card. His brother-in-law said there were some neighbors present who saw what happened next:

> Nazir Ahmad was walking slowly. The BSF men asked him why he was limping. He told the soldiers that he had been hit by a bullet as he was running past the bus. But the soldiers must have thought that he was the escaped militant because they immediately pointed their guns at him. Our neighbor, who was standing there, heard Nazir Ahmad say, "I am not a militant. You can arrest me and check." Instead, they opened fire and killed him.[312]

The villagers went to the local police station. According to the brother-in-law, several eyewitnesses said that they had heard Nazir Ahmad offer to surrender. That night, members of the BSF came to the village. They met the eyewitnesses and the family. They visited the victim's sister and brother-in-law as well:

> They said, "We will settle with you. Change your statement to say that he was asked to surrender but did not stop." They offered money. But I said that my brother-in-law has small children. If we take your money, tomorrow the militants will come and ask why we settled. They will kill the children.[313]

The BSF soldiers repeatedly returned to the village. Nazir Ahmad's relatives were summoned to their camp. So were the eyewitnesses. Soldiers pressured them to change their statements. Finally, the villagers complained to the local police. That appeared to have some effect. The summons and visits by the BSF stopped. About two weeks later, according to the brother-in-law, that unit of the BSF was shifted out of the neighborhood. However, he does not know whether those responsible for Nazir Ahmad's death were ever punished. No eyewitness or relative was ever called to testify in any court of inquiry about the incident. The district authorities paid the routine 100,000 rupee (roughly U.S.$2,300) compensation handed out in cases of death due to crossfire. As far as anyone knows, the case is now closed.

Killing of Abdul Rashid, October 17, 2004

Around midnight on October 16-17, 2004, security forces arrived at the home of thirty-six-year-old Abdul Rashid. His wife, Taja Bano, told Human Rights Watch:

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[312] Human Rights Watch interview with Nazir Ahmad Dar, victim's brother-in-law, Kharpora village, Avantipora, February 25, 2006.
[313] Ibid.

> They knocked on the doors and then asked for some tea. Four men walked inside. They were in uniform and carrying weapons. But they had black cloths tied around their faces. There were others outside... They asked for my husband and they said they would talk to him outside. I do not know what they said to him. We were not allowed to go out. When they were leaving, one of them said that my husband would be back soon. He was going to show them something. In the morning, we found that they had poured the tea in the drain. My husband had not returned.[314]

The family does not know whether the security forces belonged to the army, the paramilitaries, or the police (they were told by neighbors that the men belonged to the Special Operations Group, SOG, a counter-insurgency unit of the state police). The next day, villagers found a body lying near the road and some of them identified it as Abdul Rashid. He had been shot.

The local police station handed Abdul Rashid's body to his relatives. His father filed a police complaint alleging that he had been murdered by security forces. The local police certified that Abdul Rashid, a laborer and father of seven, had no links with the militants. The family was then paid compensation of 100,000 rupees.

Abdul Rashid's family believes that the security forces killed him because his wife's brother, Mohammad Yusuf Sheikh, was a militant. Taja Bano said that Mohammad Yusuf did not keep in touch with his family, but the security forces were unwilling to believe this:

> The army and police had come to the house many times before this. They wanted us to tell Mohammad Yusuf to surrender. How could we do anything? My brother did not meet us.[315]

The family had initially wanted to file a lawsuit against the police, so that Abdul Rashid's murderers could be prosecuted. But then they decided against it. Says Abdul Rashid's mother, Saja Bano: "We are poor. My son is dead. I was scared that they would come and kill my grandson as well."[316]

She had good reason to fear further violence from the security forces. Her daughter-in-law says that after Mohammad Yusuf had joined the Hizb-ul-Mujahedin in the late 1990s, the security forces would often harass his brother, Bashir Ahmed Sheikh, about Mohammad Yusuf's whereabouts. Taja Bano recounted:

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[314] Human Rights Watch interview with Taja Bano, wife of victim, Narbal, Budgam, August 2, 2005.

[315] Ibid.

[316] Human Rights Watch interview with Saja Bano, mother of victim, Narbal, Budgam, August 2, 2005.

> They used to come and say that Mohammad Yusuf must have visited us. Or that we knew where he was. Or that he had hidden weapons in the house. But it was all untrue.[317]

According to Taja Bano, Bashir Ahmed "disappeared" on February 17, 2003. His body was later handed over to the family with bullet wounds. She blames the security forces for his death, saying that some neighbors had seen Bashir Ahmed being taken into custody by security forces in Srinagar.[318] In June 2005, Taja Bano heard rumors that Mohammad Yusuf Sheikh had been killed in an armed encounter. She does not have any details.

Killings of Syed Yaseen Shah and Mohammad Anwar Shah, April 20, 2004

In March 2004, Mohammad Anwar Shah, a Muslim cleric, brought his ill mother from their mountain village in Chootwaliwar, Gandherbal, to Srinagar to see a doctor. While he left his mother with his sister, Mohammad Anwar stayed with his cousin, Syed Yaseen Shah, also a cleric, who worked at a Srinagar mosque.

On March 28 the two men left Syed Yaseen Shah's house in the morning. According to Syed Yaseen's wife, they had fixed an appointment to discuss Mohammad Anwar's mother's case with a Srinagar doctor. They left saying they would be home for lunch. They never returned.

The family contacted the police and filed a missing persons complaint. Three or four times, the family was summoned for identification of unknown corpses, most of them militants killed in fighting, but they were not their missing relatives.

An acquaintance told Syed Yaseen's wife that the two men had been seen being arrested near Srinagar's Iqbal Park by security forces. So their relatives went to various army camps asking if the two men were in custody, but to no avail. Says Mohammad Anwar's brother, Syed Mohammad Ismail Shah: "We searched everywhere. For three months, we were running from here to there."[319]

In June 2004, the family heard about the death of two militants in Lolab on April 20, 2004. In a police report, the 18th Rashtriya Rifles claimed to have killed two foreign militants, whom they named as Abu Faisal and Jaffar Ali, in an encounter.[320] Both bodies had been buried in Lolab by

[317] Human Rights Watch interview with Taja Bano, wife of victim, Narbal, Budgam, August 2, 2005.
[318] Human Rights Watch interview with Taja Bano, sister of victim, Narbal, Budgam, August 2, 2005.
[319] Human Rights Watch interview with Syed Mohammad Ismail Shah, Gandherbal, October 12, 2004.
[320] Human Rights Watch interview with Riaz Ahmad, victims' lawyer, Srinagar, October 2004.

the Lalpur police. Although the names are not mentioned, the army website lists the killing of the two militants, along with a list of weapons that were recovered.[321]

The family went to the Lalpur police station, where they were shown photographs of the dead "foreign" militants. The dead were their relatives: "Abu Faisal" was Mohammad Anwar, and "Jaffar Ali" was Syed Yaseen.

Mohammad Ismail told Human Rights Watch that he then appealed to the district magistrate, asking for exhumation of the bodies so that proper burial ceremonies could take place. A week later, the bodies were exhumed in the presence of local police and government doctors. Relatives identified both bodies, which were consequently handed over to be buried in the family graveyard.

Mohammad Ismail told Human Rights Watch that Syed Yaseen Shah had joined the militants in 1990, had returned from training in Pakistan in 1993, had been arrested in 1994, and released four years later. He claims that his cousin had no militant connections at the time they were killed. Syed Yaseen Shah was thirty-five when he died, married with three children. Mohammad Anwar Shah was twenty-eight when he was killed. He was sickly, having needed surgery in 2001 for a stomach ailment, and, according to his brother, was never part of any extremist group.

The family does not want to pursue the prosecution of the soldiers who claimed to have killed two foreigners in an encounter. They are only relieved that the bodies were returned to them and were properly buried. They expect no compensation. According to Mohammad Ismail:

> In the official records, the bodies are that of some foreign militants. My brother is still a "disappeared." How can I claim compensation? If I try to do anything, they will take his body away. At least now he is resting in the family graveyard.[322]

Killing of Zohar Ahmad Lone, Budgam, October 4, 2004

On October 4, 2004, seventeen-year-old Zohar Ahmad Lone and four others from his village were summoned by soldiers belonging to the 35th Rashtriya Rifles. They were taken to the next village, Naslapora, where two militants were holed up in a house. The house had been surrounded by troops who were calling out to the militants, asking them to surrender. Zohar Ahmad and the others were then told to walk up to the house and ask the militants to surrender. As soon as they reached the door, the militants opened fire. One of Zohar Ahmad's friends was injured and fell to the ground. Frightened, Zohar Ahmad turned around and started running

[321] "Truth About Kashmir, Events in Jammu and Kashmir as on 20 April 2004," [online] http://armyinkashmir.org/updates/apri2004/20.html (retrieved February 11, 2006).

[322] Human Rights Watch interview with Syed Mohammad Ismail Shah, Gandherbal, October 12, 2004.

away. Some soldiers standing at the back opened fire, probably mistaking him for one of the militants, and killed him.

Soldiers then took Zohar Ahmed's body to the local police station and said that Zohar Ahmad had been killed in crossfire. The operation continued, and the two militants were killed.

The government paid compensation to the family, as is the norm in the case of death in crossfire. Zohar Ahmed's father, Ghulam Mohammad Lone, told Human Rights Watch that he did not want to pursue a case to prosecute the soldiers who had deliberately placed his son at risk: "What is the point? Nothing will happen and instead the army will be angry with me."[323]

Killing of Abdul Hamid Ganie, Gandherbal, September 12, 2003

On September 11, 2003, several police officers belonging to the Special Operations Group came to the home of Abdul Hamid Ganie, a former militant who had been appointed as a special police officer (a scheme to generate employment by informally hiring Kashmiris, particularly militants who have surrendered, into the police force to do administrative work or man checkposts).[324] According to his brother, Abdul Rashid Ganie, Abdul Hamid told his wife before leaving that the officers needed him for a police operation.

The next day, the SOG handed Abdul Hamid's body to the local police station and filed a report, claiming that Abdul Hamid was a militant who had agreed to help the police locate weapons hoarded by his group, but on the way an exchange of fire with armed gunmen had broken out and Abdul Hamid had been killed in the crossfire.[325]

Abdul Rashid Ganie told Human Rights Watch that he found bruises and strangulation marks on his brother's body. He claims that Abdul Hamid was tortured and then murdered because of a quarrel Abdul Rashid had with a local official from the SOG about money. This man, accompanied by his colleagues, had come in search of Abdul Rashid, but he was not home. The next day they picked up his younger brother, Abdul Hamid, instead.

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[323] Human Rights interview with Ghulam Mohammad Lone, Budgam, October 14, 2004.

[324] Special Police Officer was a post created to bypass the usual procedures for entry into the police force to generate employment, particularly for surrendered militants. SPOs are usually given administrative jobs or posted at routine checkpoints. In the late 1990s, there were complaints of extortion and intimidation by SPOs. The state government of Jammu and Kashmir had also used former militants, called Ikhwanis, for counter-insurgency operations, leading to terrible abuses that were documented by Human Rights Watch in its May 1996 report "India's Secret Army in Kashmir."

[325] Human Rights Watch interview with Abdul Rashid Ganie, victim's brother, Gandherbal, October 14, 2004.

> They wanted revenge and so they tortured my brother and then they killed him. His ribs and legs were fractured and there was a red mark around his neck. They must have strangled him.[326]

After protests by villagers, the local administration ordered an inquiry on October 1, 2003. The inquiry learned from a dental surgeon, Dr. Roof Jeelani, that members of the SOG had forced him to sign on the death certificate that the cause of death was bullet injuries leading to loss of blood. He testified in writing on January 6, 2004, that he was not trained to perform autopsies and had been "compelled by [the SOG] and the policemen who were more than 30 members."[327]

Abdul Hamid's body was exhumed for autopsy and several villagers and eyewitnesses were interviewed. Based on the resulting report, on March 1, 2004, the district magistrate wrote to the superintendent of police in Gandherbal that "the findings of the enquiry reveal that the death… took place while in the custody of SOG personnel, Gandherbal." Saying that SOG personnel had claimed that Abdul Hamid died while accompanying a raiding party, the report said that "this aspect had been found doubtful during the enquiry," and the magistrate instructed the superintendent of police to initiate proceedings against the "delinquent officials."[328]

The district authorities instructed the police to lodge a complaint of murder against thirteen men, but as of February 2006 it did not appear that any charges have been filed.[329] All were still employed by the state police. They have, according to family members, threatened them on several occasions to withdraw the case. As Abdul Rashid told Human Rights Watch: "They say, 'It has been one year. Look. Nothing happened to us. But you have seen what we did to your brother. We will do the same to you and to your children.'"[330]

Killing of Farooq Ahmad Khan, September 3, 2003

On August 19, 2003, Farooq Ahmad Khan, who worked in a Srinagar bakery, was taken into custody along with his employer, Bashir Ahmed Sofi, by soldiers from the 18th Rashtriya Rifles. According to Farooq Ahmad's father, Bashir Ahmed Sofi had quarreled with another employee who had possibly provided false information about Bashir Ahmed to the security forces. The father thinks Farooq Ahmad was taken because he was in the wrong place at the wrong time.[331]

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[326] Ibid.

[327] A copy of the doctor's testimony dated January 6, 2004, was shown to Human Rights Watch by Abdul Rashid Ganie, October 14, 2004.

[328] A Copy of the district magistrate's March 1, 2004 orders was shown to Human Rights Watch by Abdul Rashid Ganie, October 14 2004.

[329] Report by the Public Commission on Human Rights, Srinagar, February 20, 2006.

[330] Human Rights Watch interview with Abdul Rashid Ganie, October 14, 2004.

[331] Human Rights Watch interview with Wali Mohammad Khan, Srinagar, October 12, 2004.

According to Farooq Ahmad's father, Bashir Ahmed was released a few hours after being arrested. He said he was asked for information about militants operating in the area, and that he had been separated from Farooq Ahmad soon after arrest. When Farooq Ahmad failed to return, Bashir Ahmed informed Farooq Ahmad's relatives of his arrest. Farooq Ahmad belonged to a poor farmer family of ten from a border area of Jammu and Kashmir. Wali Mohammad Khan, Farooq Ahmad's father, rushed to Srinagar, where he went to local police stations to ask about his son, but he was unable to locate him. With hardly any money to pay lawyers, bribe officials, or survive in a big city, the family was forced to postpone a daughter's wedding.

Some villagers suggested that Farooq Ahmad's father contact the Association of Parents of Disappeared Persons (APDP). On January 15, 2004, the APDP helped Wali Mohammad file a habeas corpus petition. The army denied having arrested Farooq Ahmad.[332]

Meanwhile, a relative gave Wali Mohammad a September 3, 2003 copy of the Urdu-language newspaper *Al Safa*, which carried a news report that one Imtiaz Ahmad, a Pakistani militant from Kala Khan in Punjab, had been shot in an "encounter." The article said that:

> One militant, a suicide bomber, was killed by BSF 57 BN [57th Battalion of the Border Security Force] yesterday at Ishpur, Nishat, Srinagar. He was asked to stop when he behaved suspiciously but instead, he started firing at BSF officials. In retaliation BSF personnel also opened fire resulting in his death…. A rifle and three hand grenades were recovered from him.[333]

According to Wali Mohammad, the accompanying photograph of the killed militant was that of his son, Farooq Ahmad.[334]

> I saw the photograph only in October and went to the police station. I showed them the photograph and told them it was my son. The police officer said that this man was a *fidayeen* [suicide bomber] from Pakistan called Imtiaz. I said that my son is not called Imtiaz but this is his picture. [335]

Farooq Khan's body had been handed over by the police to a voluntary group in Srinagar that performs the funeral rites of unidentified militants. With the APDP's help, Wali Mohammad filed a petition in the High Court asking for the body to be exhumed.[336] On October 12, 2004, Wali

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[332] Human Rights Watch interview with Parvez Imroz, APDP, February 24, 2006.
[333] *Al Safa* newspaper, September 3, 2004 (English translation of Urdu original).
[334] Human Rights Watch interview with Wali Mohammad Khan, victim's father, Srinagar, October 12, 2004.
[335] Ibid.
[336] Ibid.

Mohammad's plea was turned down by the High Court. His lawyers appealed. Finally, on January 3, 2005, the district magistrate ordered the exhumation of the body for DNA sampling to establish its identity. The exhumation took place on April 11, 2005. The forensic results of the DNA test were still being awaited ten months later, as of February 2006. Parvez Imroz of the APDP and Wali Mohammad's lawyer said they would file an appeal in the Indian Supreme Court.[337]

Killing of Mohammad Bashir Ahmed Sheikh, Rustan Beerwah, Budgam, July 17, 2003

After Mohammad Yusuf Ahmed Sheikh became a militant in 1990, his family was constantly harassed by security agencies. His two younger brothers, Mohammed Bashir Ahmed Sheikh and Mohammed Tariq Ahmed Sheikh, were often taken away to illegal detention centers in police and army barracks for interrogation. In 1996, Tariq Ahmed was beaten so badly that he lost his hearing. In August 2000, when security forces raided the family home yet again looking for information about Yusuf Ahmed, his other brother, Bashir Ahmed, climbed into a tree from the third-story window of his house to escape the possibility of another round of torture and interrogation. He fell and was badly injured, partially losing the use of his hands. A hospital report notes that he was admitted on August 18, 2000, with head injuries.[338]

In July 2003, Bashir Ahmed was once again summoned for interrogation by the Special Operations Group of the state police. He was told to come to the Harinawaz camp. He took a bus there on July 10, 2003. He then "disappeared." His family contacted the police and placed a notice in the local papers. According to his mother, Fatima Begum, a week later someone from Batamalloo, a neighborhood in Srinagar, contacted the family to say that he had seen security officials arrest Bashir Ahmed at the Batamalloo bus stop on July 10, 2003, as soon as he got off the bus.

According to his mother, when they first contacted the police a constable on duty told them that Bashir Ahmed was in custody and that he would be released. However, after that first day, officials at the Harinawaz camp denied that Bashir Ahmed was in police custody and said that he had not been summoned to the camp. Fatima Begum has no evidence that Bashir Ahmed had actually been called to the camp. He had simply come home and said that he had been asked, once again, to report to the police.

Following Bashir Ahmed's "disappearance," his relatives and neighbors held protest demonstrations. The local police promised to inquire. On the afternoon of July 18, 2003, they told the family that Bashir Ahmed had been killed in an armed encounter in Gandherbal, near Srinagar. As is the law, the Rashtriya Rifles had filed a report at the nearest police station in Gandherbal, reporting an armed encounter on July 17, 2003, in the surrounding forest in which a

[337] Human Rights Watch telephone interview with Parvez Imroz, APDP, Srinagar, February 7, 2005.
[338] Hospital report shown to Human Rights Watch, October 15, 2004.

militant had been killed; arms and ammunition were recovered after the killing. They claimed that the militant was Bashir Ahmed. His mother disputes this as impossible:

> Bashir Ahmed was handicapped after he fell from the tree. His hands were almost useless. He could barely hold a cup of tea and could certainly not carry heavy weapons. The army is lying.[339]

Fatima Begum went to Gandherbal, where she identified the body. Bashir Ahmed's body was handed over to his family. Relatives and neighbors held more demonstrations insisting that Bashir Ahmed had been killed in a faked encounter. To pacify them, the district official orally promised the protesters that there would be an inquiry. On July 19, 2003, a Special Operations Group officer in Budgam, Mushtaq Ahmed Bukhari, told journalists that Bashir Ahmed had not been taken into police custody. But he also agreed that Bashir Ahmed was not a militant. "I know he was innocent but his elder brother is a militant," he said.[340]

Fatima Begum and other relatives went several times to the district headquarters to ask about the promised inquiry, but they were unable to obtain any information. Meanwhile, members of a local unit of the Special Operations Group visited her home repeatedly and threatened her and her family. Says Fatima Begum:

> The police used to raid our house all the time. They even hit me when I protested. I even went to Mehbooba Mufti [President of the PDP] and told her, "Please, blow us up with explosives, but put an end to this."[341]

In despair, the family has decided not to pursue the case. Fatima Begum explained to Human Rights Watch:

> The police already said he is a militant. They claim he had weapons and fired at the army. What can we do about him now? We just hope that the security forces leave us alone.[342]

Killing of Javed Ahmad Magray, Nowgam, May 1, 2003

Javed Ahmad Magray, a seventeen-year-old student, was studying in his room late at night when his mother last saw him. The following morning, he was missing. His family initially thought that

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[339] Human Rights Watch interview with Fatima Begum, Budgam, October 15, 2004.
[340] Informative Missive, July 2003.
[341] Human Rights Watch interview with Fatima Begum, Budgam, October 15, 2004.
[342] Ibid.

he had left for school early. But his teacher reported him absent. They then assumed he was at the mosque. But when neighbors returned from morning prayers, they said that he had not shown up there. By then neighbors had gathered. Some of them said they had heard gunshots the previous night. When they and the family went outside to the road, they found blood stains and a tooth. The crowd immediately began to shout slogans, assuming the worst.

According to the district magistrate's inquiry report, Javed Ahmad's father, Ghulam Nabi Magray, testified that "the army officer in charge of the area came before the mob and stated that the deceased Javed Ahmad Magray is in their custody and asked we people to come along, so that we can meet him at the Army Camp near my house."[343] At the army camp in Soeting, the official told them to contact the Nowgam police station. At the police station, the family learned that an injured "militant," who had bullet wounds to his legs, shoulders, and mouth, had been brought to the police station at around 2:30 a.m. by Lieutenant Verma of the 119th Assam Regiment, and had been taken to hospital. The "militant" did not survive his injuries. When his relatives rushed to the hospital, the Sher-e-Kashmir Institute of Medical Sciences, they identified the body as Javed Ahmad Magray.

According to the district magistrate's August 2003 report, a copy of which was obtained by Human Rights Watch, relatives and neighbors of Javed Ahmad, his teachers, the inspector of the Nowgam police station, and representatives of the army took part in the investigation. Nissar Ahmad Shah, chief of the Nowgam police station, deposed that on May 1, 2003, at 2:30 a.m., Lieutenant Verma of the 119th Assam Regiment from the Soiteng Camp arrived at the police station with a written report. According to Nissar Ahmad's testimony, the army reported that "their party was on patrol of the area and at 0030 hours four persons opened fire and on retaliation one militant was wounded and the other three taking benefit of heavy rains and darkness succeeded in running away."[344] A pistol and some bullets were reportedly recovered and handed over to the police. The police registered a First Information Report (FIR) based on a written report from Major Vastavo of the 119th Assam Regiment and sent the injured militant to hospital. Shah also testified that the police station had no record that Javed Ahmad was involved in "anti-national activity or militancy."[345] The report states that the district magistrate met with Javed Ahmad's teachers, all of whom testified that the boy was a regular student and that there had been no complaints about militant activity against him.

After recording the statements of neighbors, teachers, parents and police, the magistrate then sent a questionnaire to Major Vastavo. In his response, Major Vastavo said that Javed Ahmad had been wounded in an armed encounter. He also said the patrol party involved in the encounter had been

[343] Office of the Assistant Commissioner Revenue, Additional District Magistrate, Budgam, "Inquiry Report Into The Cause of Death of Javid Ahmad Magray," August 12, 2003, Enq/960/SQ, copy on file with Human Rights Watch.
[344] Ibid.
[345] Ibid.

led by Subedar Surinder Sinha of the 119th Infantry Battalion of Assam Regiment. In response to another question, Vastavo said that the army had not received any adverse reports about Javed Ahmad before the incident. In response to questions from the magistrate about the lack of any bullet marks in the area to establish an exchange of fire with militants, the major claimed that "troops of the unit being trained left no mark of firing at any building around the location of the incident," and that it was not a case of heavy and indiscriminate firing.[346]

The magistrate then called Subedar Surinder Sinha to record his statement. Although summoned twice, he failed to show up. The army, in a letter to the magistrate, said that Subedar Sinha's unit had been moved and suggested that further correspondence should be sent to another army address. A subsequent letter duly sent was returned undelivered after sixteen days, leading the magistrate to conclude: "This clearly indicates that the said Subedar on one or the other pretext is unnecessarily delaying to get his statement recorded."[347]

The magistrate's report states:

> From the reports/statements/documents and statements of witnesses, I am of the opinion that the deceased was reading in the ground story of his residential house during night hours. The residential house being on the road, the patrolling party headed by Subedar Surinder Sinha of 119 Bn of Assam Regiment dragged the boy out of the window… for keeping the light on and fired at him on the road, afterwards informing his superior officers who took the deceased person to the police station in a critical condition and registered the FIR. The deceased boy was not a militant nor involved in anti-national activity as per the report of the SHO [station house officer] and even the concerned army. The deceased was killed without justification by Subedar S. Sinha and his army men. Being head of the patrolling party, the said Subedar managed to go away from Srinagar and did not respond to letters deliberately though he was aware of everything.[348]

Javed Ahmad's father told Human Rights Watch that he has received no information on what action has been taken by the government against Subedar S. Sinha and his superior officers.[349] According to the Public Commission on Human Rights, the state government was unable to initiate a criminal prosecution because it failed to receive permission from the central government as required under Section 6 of the Armed Forces (Jammu and Kashmir) Special Powers Act.[350]

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[346] Ibid.

[347] Ibid.

[348] Ibid.

[349] Human Rights Watch interviews with Ghulam Nabi Magray, Soeting, October 17, 2004.

[350] Human Rights Watch interview with Public Commission on Human Rights, Srinagar, February 20, 2006.

In an interview with Human Rights Watch, Col. Arun Marya, a human rights officer at Srinagar's army headquarters, said that the army never acts without prior information and that Javed Ahmad must have been secretly operating as a militant, without the knowledge of his family and neighbors.[351] In spite of the district magistrate's conclusion, the army continues to list the killing of a militant called Javed Ahmad Magray on its website.[352]

B. "Disappearances"

> *"If he is alive, give me news of him. If he is dead, give me his body."*
>
> —Statement of a "half widow," the wife of a "disappeared" man, August 2005

"Disappearances" occur when people are taken into custody and authorities then deny all responsibility or knowledge of their fate or whereabouts.[353] There have been so many "disappearances" in Kashmir that there is now a term for women with missing husbands: they are called "half widows."

Most half widows are left to the mercy of relatives as they wait for news. Many end up destitute.[354] But news often doesn't come, as it is likely that a significant number of the "disappeared"—some of whom have been missing since the early 1990s—have been killed in custody.

Since the beginning of the insurgency, thousands of Kashmiris have gone missing. Of course, not all persons who go missing in Kashmir are victims of "enforced disappearance" by the security forces: some have left without telling their family or friends, often to join the militants, or simply to find jobs. Tellingly, however, the problem of "enforced disappearance" in Jammu and Kashmir is so widespread that Human Rights Watch learned of certain persons listed as "disappeared" who had actually gone away voluntarily to find jobs in other cities, but whose relatives had immediately assumed they were victims of "enforced disappearance." Consequently, with such instances of erroneous reporting, substantial controversy remains about the problem's exact prevalence. But as Human Rights Watch has reported in the past, "enforced disappearance" by troops has been widespread since the early years of the conflict. The problem has been so pervasive that it was a major issue in the 2002 state assembly election campaign: The

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[351] Human Rights Watch interview with Col. Arun Marya, Srinagar, October 2004.

[352] "Truth About Kashmir, Events in Jammu and Kashmir as on 1 May 2003," [online] http://armyinkashmir.org/updates/May2003/01.html (retrieved February 11, 2006).

[353] According to the draft International Convention for the Protection of All Persons From Enforced Disappearances, E/CN.4/2005/WG.22/WP.1/REV.4, September 23, 2005, in Article 2: "[e]nforced disappearance is considered to be the arrest, detention, abduction or any other form of deprivation of liberty committed by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law." The draft convention is available online at http://www.ohchr.org/english/issues/disappear/docs/E.CN.4.2005.WG.22.WP.1.REV.4.pdf (retrieved April 10, 2006).

[354] Human Rights Watch interview with Shabina Mir, president, Kashmiri Women's Initiative for Peace and Disarmament, Srinagar, August 5, 2005.

PDP's Mufti Mohammad Sayeed promised that, if elected, he would investigate all cases of "disappearances." His party won the election.

In Jammu and Kashmir, the "disappeared" are often initially held in army or paramilitary camps or in interrogation centers run by police specially deployed in counter-insurgency operations, making it virtually impossible for relatives and lawyers to locate or gain access to them.[355] When a person goes missing, relatives often go to the camps of the security forces—the army and paramilitaries based in Jammu and Kashmir—to search for the missing person. If the person is not released or is not produced before a magistrate, relatives go to the police to report that the person is missing. They also often go to the courts for a writ of habeas corpus to be issued ordering the authorities to produce the person in court. In most cases the army or other security forces claim that they do not have the person in their custody.

Efforts of Chief Minister Sayeed to confront the problem of disappearances, along with the determined efforts of the Srinigar-based Association of Parents of Disappeared Persons (APDP) and others in civil society, appear to be making a difference. According to the APDP, the number of new enforced disappearances dropped from eighty-one in 2003 to forty-one in 2004 to eighteen in 2005. But, crucially, thousands of cases remain unresolved. According to APDP, at least eight thousand people have "disappeared" since the insurgency began.[356] In February 2003, the Sayeed government told the state legislative assembly that 3,744 persons had gone missing in Jammu and Kashmir in the period 2000-2002 alone.[357]

Disappointingly, however, while initially Chief Minister Sayeed promised an end to "disappearances," he, like his predecessors, later began to claim that many of those missing since 1990 were actually in Pakistan training to be militants. In May 2003, the Sayeed government investigated the APDP lists and concluded that twenty-two "disappeared" persons from a list of 116 had joined militant groups or were in Pakistan, while forty-three persons had been found in their homes during police investigation. Of the rest, it claimed that six were dead, two were in custody with cases registered against them, and investigations were still ongoing in thirteen cases. The APDP responded saying that only two of the twenty-two had actually joined the militants, that some of those who the government claimed were home were actually still missing, and it demanded details in the cases of the six people who the government had claimed were dead. The truth is somewhere in between. The APDP does not have the capacity to follow up on each case

[355] The National Human Rights Commission had instructed the Jammu and Kashmir government to establish a system to record allegations of enforced or involuntary disappearances, investigate such allegations, take measures to prevent such incidents, and prosecute those found responsible in any case of enforced disappearance. National Human Rights Commission, "NHRC's Directions on enforced or involuntary disappearances in J&K, September 17, 2003, [online] http://www.nhrc.nic.in/disparchive.asp?fno=588 (retrieved May 23, 2006).

[356] Asian Human Rights Commission, Urgent Appeals Desk, "Justice: Action Against Enforced Disappearance," April 23, 2003, [online] http://www.ahrchk.net/ua/mainfile.php/2003/434/ (retrieved April 10, 2006).

[357] "3744 Persons Missing Since 2000," *The Daily Excelsior*, February 26, 2003, [online] http://www.dailyexcelsior.com/web1/03feb27/state/state#htm#9 (retrieved February 14, 2006).

of "disappearance" reported to it and, therefore, in some cases it was found during Human Rights Watch's investigations that the person had not actually been "disappeared," and was safely home. However, government claims that many of those missing have joined the militants appear to be inaccurate. The debate about the facts and the inconclusive nature of government and NGO claims make it clear why the government or a specially designated independent body should conduct a transparent investigation into each case of "disappearance" reported since 1990.

"Disappearance" of Manzoor Ahmed Mir, Awantipora, September 12, 2004

At approximately 9 p.m. on September 12, 2004, Manzoor Ahmed Mir, a thirty-seven-year-old state government employee, had just finished dinner when there was a knock on the door. His house was surrounded by security forces. Most of the men were in uniform, but there were also three masked men in civilian clothes. According to Mohammad Akbar Mir, Manzoor Ahmed's brother,

> The soldiers said that they wanted to search the house. We were told to wait outside with some of the soldiers. Others went into the house. They asked my brother to come into the house with them while they searched. After some time, the soldiers left. We went inside and realized that my brother was missing. They had taken him away. We ran outside and told the soldiers who were still walking out to the road that my brother was gone. But they refused to listen.[358]

The next day the family went to the police station to lodge a complaint. Mohammad Akbar was later informed by Sheikh Mohammad, the local police chief, that Manzoor Ahmed was alive and would be released soon. But he never returned. Mohammad Akbar says that a month later Sheikh Mohammad was transferred from the area and the police stopped taking an interest in the case.

The family was particularly concerned because Manzoor Ahmed had recently quarreled with one of his neighbors, a police sub-inspector. The police sub-inspector had allegedly threatened Manzoor Ahmed. A few days before he was taken away, approximately eight to ten masked gunmen had barged into Manzoor Ahmed's house. When the women started screaming for help, the gunmen ran away. Manzoor Ahmed then filed a police complaint against the sub-inspector. (When Human Rights Watch tried to contact the sub-inspector, we were told he was not at home.)

[358] Human Rights Watch interview with Mohammad Akbar Mir, victim's brother, Awantipora, August 1, 2005.

The wife of Manzoor Ahmad Mir holds a photograph of her missing husband while her children look on in Awantipora, Kashmir, August 1, 2005. The husband was taken from his home at night by Indian soldiers following a dispute with a police official on September 12, 2004. He has not been seen since nor has any proof of his arrest been given.
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Mohammad Akbar insists that he recognized the three masked men who came with the soldiers. He claims that they had been to the house earlier with the armed gunmen and believes them to be the police sub-inspector and his two sons. "These people are our neighbors. I've known them for years. They may have covered their faces, but I could still recognize them."[359]

In April 2005, Manzoor Ahmed's family filed a habeas corpus petition in the Srinagar High Court. According to their lawyer, the sub-inspector and his sons were named in the petition and filed a response claiming that they knew nothing about Manzoor Ahmed's "disappearance." The police and the army have not responded. The final chance to respond to the petition lapsed in February 2006.[360]

"Disappearance" of Mohammad Ashraf Bhat, Baramulla, June 23, 2003

Mohammad Ashraf Bhat, a twenty-six-year-old heart patient, on June 23, 2003, traveled to Srinagar with his mother to meet with his doctor and purchase medicine. Just as his bus from Baramulla to Srinagar was about to turn into the bus stand in Srinagar, security forces in plainclothes stopped the bus. Some men entered the bus and asked Mohammad Ashraf to step down. According to his mother, Raja Bano, he was then put into a white car and driven away.

[359] Ibid.

[360] Human Rights Watch interview with Abdul Rahman Bhat, victim's lawyer, Srinagar, March 4, 2006.

> I did not know what had happened. It happened so suddenly. I was alone, my son had been taken away, and I did not know where to go in Srinagar. Some people saw me sitting at the bus station and crying. They took me to the police station to file a complaint. But the police refused to help, saying that I should file a complaint with our local police station in Baramulla. In Baramulla, the police said that since he had been picked up in Srinagar, it was their case….We went back and forth like this. No one was even willing to register a case.[361]

The next month Raja Bano wrote to the magistrate complaining that the police were refusing to register a complaint. The magistrate instructed the police to register the complaint and begin investigations. Raja Bano says she has been going to the police station since the complaint was lodged, but they tell her there has been no progress.

Raja Bano said that her son's "disappearance" is linked to the surrender of a militant called Fayaz Ahmad Dar two days before, on June 21, 2003. The next day, security forces in plainclothes arrived at the home of Mohammad Ashraf; according to Raja Bano, Fayaz Ahmad was with them. They searched the house and then went away.

The mother of Mohammad Ashraf Bhat, Raja Banu, holds a photo of her "disappeared" son in Pattan, Kashmir, August 3, 2005. Bhat was picked up by Indian security forces from a Srinagar bus station on June 22, 2003, and never seen again.
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[361] Human Rights Watch interview with Raja Bano, victim's mother, Baramulla, August 4, 2005.

Nearly three weeks after the "disappearance," the army arrived at the home once again, accompanied by Fayaz Ahmad. The family was told that the troops were searching for some things that Fayaz Ahmad had left in the house earlier. Nothing was found during the search. The security forces then went to a neighbor's house, and weapons were recovered from him. The neighbor was arrested, but later released. As of February 2006, there is no news of Mohammad Ashraf Bhat.

"Disappearance" of Showkat Ahmad Pal, June 23, 2003

On June 23, 2003, Showkat Ahmad Pal, a college student, left for his part-time job at the *Srinagar News,* a small independent daily. According to a friend present at the time, two Maruti Gypsies, a car model often used by security forces, suddenly drove up as they were walking on Maulana Azad Road in Srinagar. Some armed men in plainclothes pushed Showkat Ahmad into one of the cars before driving away.

Showkat Ahmad's father, Abdul Rahman Pal, said that they had no idea why his son had been picked up.[362] Initially, they did not even know that he had been taken by the security forces. Later, they heard that Mohammad Ashraf, whose case is described above, had been similarly detained by security forces in plainclothes who were traveling in a Maruti Gypsy.

The family has been hunting for Showkat Ahmad in army and police camps. They did not go to court because they feared that if Showkat Ahmad was still alive he would be killed when the judge demanded to know his whereabouts. Showkat Ahmad was still missing as of February 2006.

"Disappearance" of Bashir Ahmad Sofi, June 2003

On June 17, 2003, paramilitary forces, some in plainclothes and others in uniform, arrived at the home of Bashir Ahmad Sofi in Srinagar at around 1:30 a.m. Bashir Ahmad, who often traveled to other Indian cities to sell shawls, was woken up and told that he was wanted for questioning. The soldiers told his family that he would be released in the morning. Hamida Sofi, Bashir Ahmad's sister, says that it was the Border Security Forces who took her brother: "I saw the BSF insignia on the uniform."[363]

When he failed to return, Bashir Ahmad's relatives filed a police complaint. A week later a police officer named Jala told the family that Bashir Ahmad had been detained by the 61st Battalion of the BSF. However, when Bashir Ahmad's sisters went to the BSF camp, they were told that Bashir Ahmad was not in their custody.

[362] Human Rights Watch interview with Abdul Rahman Pal, victim's father, Lawaypora, Srinagar, October 17, 2004.
[363] Human Rights Watch interview with Hamida Sofi, victim's sister, Srinagar, October 17, 2004.

The same police officer later told the family that the BSF had denied detaining Bashir Ahmad, or even holding any operation in the area on that date. Hamida Sofi said that the police had initially promised that her brother would be home soon. "But later, they said they have checked everywhere and no one knows where he is. They also said that the battalion that was posted in the area at that time has since moved to the border."[364]

A few months later, a man released from police custody came to meet the family. He said that he had met Bashir Ahmad while they were in custody at a Special Operations Group (SOG) detention center in Srinagar. When the family went to the police with the information, officials demanded to meet the man who had brought them this news. He refused, fearing retaliation. Bashir Ahmad's family appealed to the State Human Rights Commission (SHRC), which recommended cash compensation. Bashir Ahmad's relatives say they do not want money. Said Hamida Sofi: "They offered me compensation and a job. I said give me my brother instead."[365]

The family does not want to file a habeas corpus petition. "We are four girls and we have to look after our old parents and grandmother. Who will go running to court?"[366]

"Disappearance" of Mohammad Hussain Ashraf, May 24, 2003

At age sixteen, Mohammad Hussain Ashraf was already working as a carpet weaver to support his family in Srinagar. After visiting a relative called Ali Mohammad Bhat in Pulwama on May 24, 2003, he started walking to the bus station for the trip home. Close to the bus stop was a garage where some men from the 7th Rashtriya Rifles were getting their jeep fixed. Eyewitnesses later told the family that when he saw the soldiers, Mohammad Hussain started to run away. He was immediately stopped and interrogated.

Two mechanics working at the garage, Yasin Mohammad Malik and Shabir Ahmed Bhat, intervened, telling the soldiers that Mohammad Hussain was young and must have been scared when he saw men in uniform. But the soldiers insisted that he had acted suspiciously and asked Mohammad Hussain to take them to the house where he had come from. They searched Ali Mohammad's house but did not find anything. Nevertheless, according to Ali Mohammad, the soldiers took Mohammad Hussain away.

Ali Mohammad, Yasin Mohammad Malik, and Shabir Ahmed Bhat later testified to the State Human Rights Commission (SHRC) that they saw the army take Mohammad Hussain into custody. They took down the vehicle registration number, 98B-065366, and later gave it to the police and SHRC.

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[364] Ibid.
[365] Ibid.
[366] Ibid.

When Kharzi Begum, Mohammad Hussain's mother, heard about the detention, she rushed to the Khrew camp where the 7th Rashtriya Rifles is based. She was told that Mohammad Hussain would be released soon. When she returned, however, she was not allowed to speak to any officials. On June 5, 2003, the family filed a police complaint. On June 7, when she went back to the Khrew camp looking for her son, Kharzi Begum was told that her son had already been released. But as of February 2006 Mohammad Hussain has not come home. Khazri Begum said she went back to the 7th Rashtriya Rifles camp and to the police several times, but they didn't do anything to help:

> At the Rashtriya Rifles camp, they would not even allow me to enter. And when I went to the police, they say they cannot do anything because the army says that my son has already been released. Where is he then?[367]

"Disappearance" of Abdul Rashid Hajam, Dangerpora, Baramulla, November 16, 2002

On the morning of November 16, 2002, Abdul Rashid Hajam went to work at his apple orchard in Baramulla. He has not returned since. According to his wife, Safiqa Bano:

> Two of our neighbors saw an army jeep and an army truck stop near the orchard. They saw some soldiers call him to talk to them. The orchard is fenced with barbed wire, but they asked him to crawl under it and come to the road. They talked for a bit and then he walked over to the jeep. The man in the jeep pointed to the truck. After he got in, they pulled down the canvas curtain at the back of the truck and they drove away.[368]

The family filed a police complaint and also went to the adjoining army camps in search of Abdul Rashid. No one had any news of him. The local police and the commander at the local army camp in Chaksari questioned the two eyewitnesses. The local district authorities also conducted enquiries. They could not trace Abdul Rashid or even discover the army unit that was operating in the area at that time.

Soon after Abdul Rashid "disappeared," local villagers protested, blocking traffic on the National Highway. One army officer, Maj. Vishal Dhobi of the 29th Rashtriya Rifles from the Chaksari camp, met with the family and promised to try and locate Abdul Rashid. He failed, but offered the army's assistance in educating Abdul Rashid's children. On June 3, 2003, he wrote a letter to the district authorities saying:

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[367] Human Rights Watch interview with Khazri Begum, victim's mother. Srinagar, October 17, 2004.

[368] Human Rights Watch interview with Safiqa Bano, victim's wife, Dangerpora, August 4, 2005.

> This is to inform you that Abdul Rashid Hajam… was picked up by unidentified security forces in a military van on 16 November 2002. On doing investigation it has come to notice that the above mentioned is suspected to be dead. Hence an ex gratia case must be initiated as soon as possible for the relief of his widow and three minor children.[369]

The family received neither compensation nor any news of Abdul Rashid. The family appealed to the State Human Rights Commission. The police, in response to a notice from the SHRC, said that, "During our investigations all security forces units operating in the area were approached…. But no clue was struck."[370] As of February 2006, Abdul Rashid was still missing.

C. Torture and Cruel, Inhuman, and Degrading Treatment

> *"You have to agree that we will not get the information we need over a cup of tea."*
>
> —Indian official talking to Human Rights Watch about interrogating detainees[371]

Indian security forces routinely ignore procedural safeguards designed to prevent torture and other mistreatment of persons in custody. Although Indian law requires that everyone taken into custody must be produced before a magistrate within twenty-four hours, this rule is usually ignored. Sections 330 and 331 of the Indian Penal Code forbid the causing of "hurt" or "grievous hurt" to extract a confession, and prescribe prison terms and fines for officers found guilty of torture.[372] The Criminal Procedure Code also has clauses to protect detainees from torture: Section 54 provides the right to a medical examination, Section 162 bars the use of written confessions at trial, Section 164 requires a magistrate to ensure that a confession is voluntary, and Section 176 requires a magisterial inquiry into any death in custody.[373] The Supreme Court has stated resolutely that Article 21 of the Indian Constitution protects individuals from any form of torture or cruel, inhuman, or degrading treatment.[374] All of these provisions are routinely disregarded.

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[369] Letter from 29 Rashtriya Rifles, c/o 56 APO, June 3, 2003. Copy shown to Human Rights Watch by Safiqa Bano, August 4, 2005.

[370] Response to the State Human Rights Commission by the Zonal Police Headquarters, June 25, 2005. Copy shown to Human Rights Watch by Safiqa Bano, August 4, 2005.

[371] Human Rights Watch interview, details withheld.

[372] Indian Penal Code, Sections 330 and 331, [online] http://www.indialawinfo.com/bareacts/ipc.html#_Toc496765205 (retrieved April 10, 2006).

[373] Criminal Procedure Code, 1973, [online] http://www.indialawinfo.com/bareacts/crpc.html (retrieved April 10, 2006).

[374] See D.K. Basu v. State of West Bengal, 1996. This landmark judgment by the Supreme Court led to what is commonly known as the eleven-point "Basu guidelines" to prevent the widespread use of torture in custody. Article 21 of the Indian Constitution on the "protection of life and personal liberty" states that "No person shall be deprived of his life or personal liberty except according to procedure established by law."

Human rights defenders have also long complained that Indian law and jurisprudence do not have an express definition of torture.[375] However, India is a state party to several major international human rights treaties that prohibit torture, including the International Covenant on Civil and Political Rights (ICCPR). Article 7 of the ICCPR states that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment."[376] India has signed, but not ratified, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (the Convention against Torture).[377] The Convention against Torture defines torture as:

> any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

As a signatory to the Convention against Torture, India is "obliged to refrain from acts which would defeat the object and purpose" of the treaty.[378] Additionally there is such a strong international consensus on the prohibition against torture that it is considered to be binding customary international law on all states, including those that have not ratified the Convention against Torture.[379]

Torture remains endemic in India. According to former detainees and senior police officials, torture is routine in the interrogations of alleged militants in Jammu and Kashmir. Says Riaz Ahmad, a lawyer at the High Court Bar Association:

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[375] South Asia Human Rights Documentation Center, Human Rights Features, "Prevention of Torture," August 17, 2005, [online] http://www.hrdc.net/sahrdc/hrfeatures/HRF124.htm (retrieved February 16, 2006).

[376] International Covenant on Civil and Political Rights (ICCPR) (1976), [online] http://www.ohchr.org/english/law/ccpr.htm (retrieved August 21, 2005).

[377] Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987, [online] http://www.unhcr.ch/tbs/doc.nsf/0/082560404004ff315c12563b005e1c83? (retrieved February 16, 2006). India signed the convention in 1997.

[378] See Vienna Convention on the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679, entered into force January 27, 1980, Article 18. Although India is not a party to the Vienna Convention, its provisions are considered customary international law.

[379] See for example Nigel Rodley, The Treatment of Prisoners under International Law (Oxford: Clarendon, 1999), p. 74. An important elaboration of the principle is contained in the U.N. Code of Conduct for Law Enforcement Officials, which states in Article 5 that no law enforcement officials may inflict, instigate, or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment nor may any law enforcement official invoke superior order in exceptional circumstances such as . . . internal political instability or any other public emergency . . . as justification for torture." Code of Conduct for Law Enforcement Officials, G.A. Resolution 34/169, December 17, 1979, [online] http://www.unhchr.ch/html/menu3/b/h_comp42.htm.

> Of course there is torture. It is routine. But most people are so glad to be out of interrogation alive, they don't really complain about the torture.[380]

It is not just Kashmiris suspected of being militants who are subjected to torture. Relatives of militants are also taken into custody and tortured, either to discover the whereabouts of a suspect, or as a way of forcing the militant to surrender. One man, the brother of a militant, told Human Rights Watch that he was beaten and given electric shocks in custody so that his brother would be forced to surrender. It finally stopped when his brother was killed in an armed encounter in 1998.

> I curse my brother for what he brought upon me…. But more than that I curse the soldiers. I was only a boy at that time. They would strip me, make my lie naked on the floor, kick and beat me, split my legs wide apart and leave me tied up like that for hours. When I thought I could not bear any more pain, they would give me electric shocks. Then they would let me go and a few weeks later, again. The same thing. It has ruined me so much that now if I see a man in uniform, I start sweating and trembling. They know. There are many Kashmiris like me. They just pat on the back and tell me to go away.[381]

Torture and other mistreatment usually takes place in interrogation centers operated by the security forces. It most often occurs in the first hours or days after the victim is detained. Detainees are usually first interrogated by the detaining security force for periods of time that may range from several hours to several weeks.[382] During this time the detainee is not produced before a court or given access to anyone outside the interrogation center.[383] This violates guidelines laid down by the Supreme Court on arrest and detention.[384] According to the Armed Forces (Jammu and Kashmir) Special Powers Act, individuals picked up by the army have to be immediately handed over to police custody.[385] This rule is routinely flouted while security troops interrogate, and often torture, a detainee.

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[380] Human Rights Watch interview with Riaz Ahmad, lawyer, Srinagar, October 11, 2004.

[381] Human Rights Watch interview, details withheld.

[382] This is a violation of Principle 11 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment, Resolution 43/173, December 9, 1988.

[383] This also violates Principle 9 of the Body of Principles for the Protection of All Persons Under Any Form of Detention or Imprisonment. The Office of the High Commissioner for Human Rights says that: "The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law."

[384] As stated above, the common law on treatment of people taken into custody is provided under Supreme Court guidelines in the 1996 case of D.K. Basu v. State of West Bengal. The Basu guidelines, as they are called, lay down specific requirements for arrest, detention or interrogation of any person taken into custody, to prevent torture.

[385] The Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, Section 6 says: "Any person arrested or taken into custody under this Act and every property, arms, ammunition or explosive substance or any vehicle or vessel seized under this Act, shall be made over to the officer-in-charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest, or as the case may be, occasioning the seizure of such property, arms, ammunition or explosive substance or any vehicle or vessel, as the case may be."

The longer a detainee is held without being brought in front of a judge, the greater the risk that mistreatment will occur. A police official told Human Rights Watch:

> The foreign militants fight till they die because they don't like to be arrested. The Kashmiris surrender and we prefer that, because we can rehabilitate them. Quite often, they are just looking for a way to get out of this life with a gun…. But there are other hardcore ones. Even if they are caught, it is not like these fellows will give us all the information if we treat them with love and affection. We have to shake it out of them. It is the only way to prevent future attacks.[386]

Violence in custody has now become the norm in Jammu and Kashmir. Many Kashmiris think it starts with the way the security forces treat them on the streets. Human Rights Watch was told by many Kashmiris that individuals stopped for routine interrogation by security forces—whether a suspect or not— are usually subjected to rude and intimidating questioning. One university student, who has been detained a few times for questioning, described his anger over the government's treatment of Kashmiris:

> The government can go on and on about how it wants to protect human rights, but they don't see what is happening on the streets. We always try to avoid the security forces and it is not because we are guilty. It is because they treat us as criminals. Eventually, they will make us all militants. Slapping us is just their way of saying 'Hello.'… If you end up in one of those interrogation centers, then we just thank Allah if we walk out alive with just a beating. They hit first and ask questions later.

Often, in Jammu and Kashmir, when asked if they are willing to lodge police complaints and pursue a legal battle to secure justice in the case of torture or death of a loved one, people's response is "No." Fear of further harassment, and a conviction that the government will protect its security forces, deters them from seeking justice. For this reason, few civil cases are brought against the army, paramilitaries, or police for torture. According to lawyer Parvez Imroz, "No suits are filed against the army. Nevertheless, in a few cases, the courts have passed decrees in the suit for damages against the state government. The High Court has observed that the state is liable to pay the compensations for the omissions and commissions of the army."[387]

Kashmiris who talked to Human Rights Watch about the torture and other abuses they had suffered in custody all requested anonymity. In most cases we have included their first names only because they are common Kashmiri names, but we have withheld all other details. In each of these

[386] Human Rights Watch interview, details withheld.

[387] Human Rights Watch interview with Parvez Imroz, Srinagar, February 20, 2006.

cases, those tortured and their relatives said they did not want to file any complaints. All of them said they were only glad that there was no death, "disappearance," or indefinite detention.

The cases below are illustrative of the larger problem. Sadly, hundreds of cases could be provided of such practices. There is perhaps no human rights abuse in Jammu and Kashmir that occurs with such great and unchallenged impunity as torture. The fear of victims to come forward means that this problem will not be addressed by public pressure. Rather, at least in the short term, reform will have to come from the top. To date, senior officials, whose failure to act to stop torture in custody could someday subject them to legal responsibility, have yet to initiate the needed reforms.

Torture of Mohammad Ibrahim Dar's family

A day after his sister Salima's wedding in 2000, Mohammad Ibrahim Dar, a member of the Hizb-ul-Mujahedin, disappeared without telling his family of his whereabouts. Within days, the police arrived at his home in Srinagar. They searched the house and detained Mohammad Ibrahim's father, brother, and brother-in-law, who say they were taken to a police interrogation center, questioned about Mohammad Ibrahim, and severely beaten. While the father and brother-in-law were released after two days, the brother remained in custody for a week.

After that, the family was repeatedly harassed by the police. Says Mohammad Ibrahim's sister, Salima Ganai:

> Our life had become hell. The police would come to the house and break everything. Once they pushed my father on the ground, stripped him and beat him. Even my old grandfather was not spared. They hit me with their guns and beat my mother. They would take my husband and keep him for two to three days at a time and beat him. He even had chest pains because of the beatings. My younger brother Sajjad was detained many, many times. The police used to say that my brother was visiting us and that we were lying. I told them, "Stay here then and arrest him if he comes. But don't torture us." Finally, we moved out because we could no longer take the abuse. [388]

Mohammad Ibrahim had become a senior Hizb-ul-Mujahedin commander, wanted in several bomb attacks and political killings.[389] He was killed by the army on September 30, 2005 (the disputed circumstances of his death are described in Section A above).

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[388] Human Rights Watch interview with Salima Ganai, victim's sister, Srinagar, February 25, 2006.

[389] Praveen Swami, "New Terror Tactics Cause Worry," *The Hindu*, September 24, 2005, [online] http://www.thehindu.com/2005/09/24/stories/2005092419180100.htm (retrieved April 10, 2006).

Torture of Bashir

Bashir (a pseudonym) described to Human Rights Watch the torture that he suffered at an interrogation center run by the Rashtriya Rifles in 2004.

> My brother is a militant, so security forces often come to our house to threaten us and ask about his whereabouts. Until now, they had only hit me a few times and questioned me. But this last time, two jeeps came to our house. The men were from the army but they were in plainclothes. I was taken to a Rashtriya Rifles camp near my house… My hands were always tied behind my back. I was beaten and kicked. Twice, I was made to lie down on the floor with my hands and legs stretched out and tied up. I was badly beaten. They asked me many questions about my brother and insisted that I was in touch with him. They said I was storing arms for his group. I kept saying that the family had no news of my brother and that my parents did not like what he was doing. But they would not believe me. After four days, they suddenly let me go…. No one was allowed to see me when I was at the camp and when [my] parents asked for me, they were told that I was not there… The torture has damaged my spleen and kidneys.[390]

Bashir's mother said that her son was so badly injured he could barely walk for days. "There were marks all over his body."[391]

Torture of Ahmad

One man called Ahmad told Human Rights Watch that in November 2003 he was picked up by soldiers in civilian clothes. For one-and-a-half months, he said, he was held by the Rashtriya Rifles. His family was not informed of his arrest, and so reported him to the police as missing. He did not have access to counsel and was not taken to a court.[392]

Ahmad said that for the entire period he was in custody he was blindfolded and handcuffed, and that he was routinely beaten up.

> They used to beat me and then ask questions. They were asking for weapons and information about militant hideouts. It was very scary. There is no law inside an army camp.[393]

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[390] Human Rights Watch interview, details withheld.
[391] Human Rights Watch interview, details withheld.
[392] Human Rights Watch interview, details withheld.
[393] Human Rights Watch interview, details withheld.

He said that he can identify one of persons who tortured him, by his voice, and that this person was the most abusive of his interrogators. Other soldiers, he said, told him that the voice belonged to a certain major.

The man was eventually released. According to his mother, when he came home, he could barely walk. He was unwilling to give any details including the unit of the army that had held him or the camp where he was held. He laughed bitterly when asked if he would consider filing a complaint.

> This is Kashmir! Who should I complain to? To the police? Or should I go back to the army? Since they have left me alive, I should try and live.[394]

Torture of Mohammad and Altaf

Two villagers from Anantnag district told Human Rights Watch that they were picked up by soldiers in civilian clothes while leaving a bank in Anantnag town. When they failed to come home, their relatives went to the army and police and filed a missing persons complaint, but no one seemed to have any news. They had "disappeared." They were released after a month. According to one of the men whom we will call Mohammad:

> As soon as they pushed us into the car, I was blindfolded. We drove around while they questioned us. Eventually they took us to an army camp. I went through agony at that camp. The soldiers were brutal. I was kept blindfolded most of the time, unless I had to go to the toilet. My hands were tied with rope at night. I was tied to a chair and questioned. They asked if I knew this militant or that. I kept saying I was innocent. I never went to Pakistan like the others because my father insisted that I complete my education. But they would not believe me. Some of the soldiers were nice. I used to ask them about …[the person arrested with him]. Once they took off my blindfold so I could see him from a distance and see that he was okay. But there were others that were brutal. I wish I could tell you how much I suffered. They cut my thighs open with a knife and then they would keep poking at the wound to try and make me talk.[395]

After a month, both men were delivered to a police station and, from there, returned to their families. The second person, whom we call Altaf, said that he was in a terrible condition after release.

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[394] Ibid.

[395] Human Rights Watch interview, details withheld.

> We were in such bad shape we were completely bedridden once we got back. I could not get up for a month. Although the army did this to innocent men, they never apologized. Nor did they pay for our treatment.[396]

Both men were too scared to file a complaint.

Torture of Bilal

Bilal told Human Rights Watch that he was picked up from his home at night by security forces and taken to a paramilitary camp, where he was tortured through the night. He was blindfolded and his hands were tied behind his back. He was then hung by his arms from the ceiling and beaten and kicked. He was asked about an arms cache and the whereabouts of some militants from his village. Bilal, a former militant, told the soldiers that he had no contact with the militants they were asking about since they had left for Pakistan four or five years before. Said Bilal:

> They said they did not believe me. I told them I had surrendered and my life was now at risk from the militants. They would kill me. I did not know anything about them. But they kept beating me and said I was a liar.[397]

Bilal was released after a few days. His shoulder bone has been permanently dislocated and he suffers from a constant tremor in his hands.

Torture of Javed

A former militant, Javed (a pseudonym), was arrested and later released. He said that when he was first arrested, he was tortured with electric shocks and brutal beatings. He did not want Human Rights Watch to provide any details of his arrest because it would then be easy to identify him. Javed's relatives were frightened and did not want Javed to talk to us. Javed's uncle said: "The soldiers will know you were here. Then they will come back and take him away again."[398]

But Javed wanted to talk to Human Rights Watch so we could tell the world his story. Even after his release, security forces often came to his home to interrogate him. In 2005, he was taken to an army camp.

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[396] Human Rights Watch interview, details withheld.
[397] Human Rights Watch interview, details withheld.
[398] Human Rights Watch interview, details withheld.

> Why are you asking me which camp? If you write it they will come back for me. I will not be able to survive it this time. I am already a mental wreck. I am taking medicines because I cannot sleep at night. I do not have a job…. No electric shocks this time. But beatings. Abuse. They called me all kinds of names. They said I was a militant, I was in touch with militants and that I was anti-national. They asked me for names. They asked me where I had hidden the guns. Over and over again. Finally, I think they realized I knew nothing. So they let me go.[399]

His uncle said Javed was in army custody this last time only for a week, but was in terrible shape when he returned and is prone to violent rages. His uncle showed Human Rights Watch a medical report that said he suffered from "reactive psychosis"—psychosis resulting from severe stress. Javed's uncle said this was not just because of the recent torture and interrogation, but because it has happened several times over the years. "Once you are branded a militant, nothing will reverse that label. Javed was young when he joined the militants. So did so many other young people at that time. They can't still be punished for this."[400]

Torture of Farooq

Farooq was picked up by the police one night for questioning in December 2004. The family was told by the policemen who took him into custody that Farooq would be questioned and would be home in the morning. According to one of his relatives:

> For ten days, we searched for him. Finally, someone in the army told us that he was in one of the camps. We went there and asked. We were told that Farooq was there but we were not allowed to meet him. We gave money to some people who work with the army. They are informers. We were told that Farooq was in the camp, but that he had been tortured so badly, he was not fit to be shown to us. We thought he was dead. For three months we kept going to the camp. But they kept asking us to come back. We were told his condition is very bad. They finally let him go, but he was very ill when he got back. It is only now, after almost a year, that he is able to walk around…. I don't think you should talk to him. It still upsets him.[401]

[399] Human Rights Watch interview, details withheld.
[400] Human Rights Watch interview, details withheld.
[401] Human Rights Watch interview, details withheld.

D. Arbitrary detentions

> *"I went to the police every day…. They promised they would let him go, but they never did."*
> —Mother of detainee, speaking to Human Rights Watch, August 2005

Arbitrary, illegal, and indefinite detention of alleged militants is a significant problem in Jammu and Kashmir. Lawyers from the High Court Bar Association of Jammu and Kashmir told Human Rights Watch that in cases of alleged militancy, the army, paramilitaries, and police often detain individuals without any legal basis. And they resist the judicial application of provisions in the Indian legal code designed to ensure against arbitrary detention. These include bringing persons promptly before a magistrate, ensuring access to lawyers, and providing a prompt trial. The police say that prosecutions are stymied because they often find it difficult to find witnesses willing to testify against alleged militants, either out of support for the militants or because they fear retribution. But it is the obligation of the authorities to address such prosecutorial concerns; prolonged, indefinite detention is not the solution.

At least 4,500 alleged militants remain in jail without trial. Many have been waiting ten or more years without being tried. The failure to be tried "without undue delay" violates international legal standards and effectively turns the presumption of innocence on its head.[402]

Indian law on the detention of criminal suspects is frequently evaded by the ready use of a preventive detention law. Section 57 and Section 167 of the Criminal Procedure Code provide that each individual detained must be produced before a magistrate within twenty-four hours or, if the investigation cannot be completed with twenty-four hours, must inform the magistrate of the detention.[403] Yet in cases involving alleged militancy in Jammu and Kashmir, this provision is seldom

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[402] International human rights law requires that persons deprived of their liberty be allowed to challenge their detention before a court. Article 9(4) of the International Covenant on Civil and Political Rights (ICCPR) mandates that "[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful." Article 14(2) of the ICCPR states that, "Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law." Article 14(3)(c) states that "In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:… (c) To be tried without undue delay. Persons apprehended during fighting between government forces and militants in Kashmir are similarly protected. International humanitarian law for non-international (internal) armed conflicts prohibits the arbitrary deprivation of liberty. Consistent with international human rights law, during an internal armed conflict the state has obligations to inform a person who is arrested of the reasons for arrest; to bring a person arrested on a criminal charge promptly before a judge; and to provide a person deprived of liberty with an opportunity to challenge the lawfulness of detention. See ICRC, Customary International Humanitarian Law, pp. 347-352.

[403] Section 57 of the Criminal Procedure Code provides that every person who is arrested and detained in custody should be produced before the nearest magistrate within a period of twenty-four hours of such arrest. Magistrates are permitted under Section 167 of the Criminal Procedure Code to remand persons arrested for a further period of up to fifteen days of police custody.

followed.[404] This is because the government usually invokes the 1978 Jammu and Kashmir Public Safety Act (PSA), a preventive detention law that permits detention of a person without trial for a period of up to two years "with a view of preventing him from acting in any manner prejudicial to the security of the State or the maintenance of public order."[405] For instance, police orders requesting the detention of Abdul Hamid Ganai and Sartaj Ahmad Ganai, copies of which were shown to us, stated in identical language that, "You are presently under police custody on remand. However, there is every apprehension that you may get yourself released on bail. Normal laws are not sufficient to deter you from your antinational activities."[406] Their detention was challenged successfully, but such cases are common as lawyer Riaz Ahmad points out: "When they are short of evidence, they [the police] also book them under PSA."[407]

Under the PSA, acting in a manner prejudicial to security includes "promoting, propagating, or attempting to create, feelings of enmity or hatred or disharmony on grounds of religion, race, caste, community, or region"[408]; and "attempting to commit, or committing, or instigating, inciting, provoking, or otherwise abetting the commission of an offence punishable with death or imprisonment for life or imprisonment for a term extending to seven years or more, where the commission of such offence disturbs, or is likely to disturb public order."[409]

The act provides that the person detained must be told of the grounds of his detention no later than five days after detention, and under exceptional circumstances, no later than ten days after detention, and must be afforded "the earliest opportunity" to object to the detention order.[410] However, the act provides that the government need not "disclose facts which it considers against public interest to disclose."[411]

The PSA provides for a review of cases, but nothing that would come close to a fair trial under international human rights law. Within four weeks of detention, an advisory board, composed of present or former high court judges and two other similarly qualified persons, must determine whether there exists sufficient cause for detention.[412] The advisory board is not an independent body, but is simply constituted "whenever necessary" by the government.[413] The proceedings—

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[404] Following examination of India's third periodic report under the ICCPR in July 1997, the U.N. Human Rights Committee in its Concluding Observations had expressed concern over the "widespread powers of detention, including preventive detention." See [online] http://www.hri.ca/fortherecord1997/vol3/india.htm (retrieved April 2, 2005).

[405] Public Safety Act, 1978, Chapter IV, Power to make orders detaining certain persons, Section 8(a).

[406] Reports of the superintendent of police, Pulwama, to the district magistrate, seeking the detention of Abdul Hami Ganai and Sartaj Ahmad Ganai, August 3, 2004.

[407] Human Rights Watch interview with Raiz Ahmad, lawyer, Srinagar, August 2, 2005.

[408] Jammu and Kashmir Public Safety Act (8) (3)(b)(i).

[409] Jammu and Kashmir Public Safety Act (8) (3)(b)(iv).

[410] Jammu and Kashmir Public Safety Act (13) (1).

[411] Jammu and Kashmir Public Safety Act (13) (2).

[412] Jammu and Kashmir Public Safety Act (15).

[413] Jammu and Kashmir Public Safety Act (14).

although not the decision—of the advisory board are to remain secret. Although the detainee may appear before the board, he or she has no right to counsel.[414] The act makes no provision for appeal against a determination of the advisory board, nor does it permit the detainee to confront witnesses against him.[415]

Under international law, preventive (or administrative) detention is permissible during a declared state of emergency that threatens the life of the nation. No such emergency has been declared in Jammu and Kashmir, nor has India, a party to the International Covenant on Civil and Political Rights, made a formal notification, as the ICCPR requires, that a state of emergency exists and that it was derogating from the Covenant.[416]

Preventive detention increases the likelihood of rights violations of detainees compared to those held under judicial supervision. It erodes guarantees prohibiting incommunicado detention and ensuring the right to be informed about the reasons for the deprivation of liberty, and to challenge the legality of the detention in a court of law. Preventive detention also increases the prospect that a detainee will be subjected to torture and other ill-treatment during interrogation and confinement, be deprived of the right to a fair and impartial trial if tried, and suffer enforced disappearance.

Under the PSA, fundamental legal safeguards under international law are routinely violated, including the right to be brought promptly before a judicial authority, to communicate with counsel of one's choosing, and to be charged and tried without undue delay.[417] Once a detention order under the PSA expires, new orders are often brought against a detainee. In many cases the total period of detention ends up being greater than the maximum allowed under the law if the

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[414] Jammu and Kashmir Public Safety Act (16) (5).

[415] ICCPR, Article 14, requires a fair and public hearing, assistance of counsel, the opportunity to confront witnesses, and a review of convictions and sentences by a higher tribunal.

[416] At the time of accession to the ICCPR, India showed its reluctance to accept the totality of human rights standards by entering reservations to articles 9 (right against arbitrary arrest and detention), 19 (freedom of expression), 21 (right of peaceful assembly) and 22 (freedom of association). Articles 19, 21 and 22 were made subject to the restrictions referred to in article 19 of the Constitution of India. India has avoided classifying the situation in Jammu and Kashmir as a state of emergency in international terms, thereby obstructing the call for accountability and transparency inherent in the comments of the Human Rights Committee. Even if India had declared a state of emergency and derogated from the ICCPR, the authorities could only restrict the right to liberty as is strictly required by the exigencies of the situation and only for the duration of the emergency. Even then, persons held under preventive detention laws are entitled to the following basic rights and guarantees, as specified by article 9 of the ICCPR: (a) to be brought before a judicial authority promptly after arrest; (b) to be informed in their own language of the specific, detailed and personalized reasons for the deprivation of liberty; (c) to have immediate access to family, legal counsel and a medical officer; (d) to communicate with and be visited by a representative of an international humanitarian agency, such as the International Committee of the Red Cross; (e) to challenge, in a fair hearing and periodically if necessary, the lawfulness of the detention and to be released if the detention is arbitrary or unlawful; (f) to complain to a judicial authority about mistreatment; (g) to seek and obtain compensation if the detention proves to be arbitrary or unlawful.

[417] International law requires that access to counsel be provided at the earliest opportunity after a person is taken into custody. See, for example, the Body of Principles for the Protection of All Persons under any Form of Detention or Imprisonment, Resolution 43/173, December 9, 1988, principle 11(1), which provides that "a detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law." See[online] http://www.unhchr.ch/html/menu3/b/h_comp36.htm (retrieved March 15, 2005). ICCPR, Article 9 (4), states that: "[a]nyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful."

person had been tried and convicted for the applicable criminal offense, such as weapons possession or conspiring to act against the state. In addition to the loss of liberty and hardship of being detained in poor detention facilities, the delay in securing a release can cause great hardship for family members who rely on the detainee for the family income. Unlike in some cases of unlawful killings by the security forces, no compensation is offered for arbitrary detentions, even when a detention order is quashed by the courts or there is undue delay in releasing a detainee after a court order is issued.

As draconian as the PSA is, its requirements are often flouted in favor of worse practices. To lawfully detain a suspected militant or other person under the PSA, the security forces must make an application to a district magistrate. The district magistrate then must issue a notice describing the case after examining the police evidence against the detainee. Lawyers, many of whom spoke to Human Rights Watch on the condition of anonymity to avoid retaliation against their clients, allege that magistrates often do not examine the cause of detention before issuing a notice. Instead, they issue a standard letter that says that the person's "activities are prejudicial to the security of the state" and that the person has been detained "to deter you from indulging in any subversive activities."[418]

Since detentions under the PSA are by their very nature supposed to be preventive and not punitive, it is crucial that due process is followed to protect individual liberty. But due process standards are flouted from the very start. Suspects are frequently picked up by security forces and kept in barracks for interrogation. As already noted above, in Section V.C, under the law the armed forces cannot hold those taken into custody and are supposed to immediately hand them over to the police.[419] In some of the cases cited below, individuals were "disappeared" for days or weeks before they were formally detained under the PSA.

Under the PSA, every detainee has the right to be informed in writing of the grounds for detention and to be afforded "the earliest opportunity to make a representation against the order."[420] Defense lawyers say that most of their clients tell them that the grounds provided to them are not specific and are usually in English, a language that most Kashmiris do not understand.[421] The ICCPR provides that in the determination of any criminal charge, a person is entitled "to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him."[422]

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[418] Copies of letters detailing grounds of detention made available to and on file with Human Rights Watch.

[419] Armed Forces (Jammu and Kashmir) Special Powers Act, Section 6. See Section V, C.

[420] Jammu and Kashmir Public Safety Act, 1978, Section 13 (1).

[421] Human Rights Watch interviews with Mian Abdul Qayoom and other lawyers of the Jammu and Kashmir High Court Bar Association, Srinagar, October 12, 2004.

[422] Article 14(3)(a), ICCPR (1976).

When habeas corpus petitions are filed with the High Court challenging a detention, the court then orders the government to show cause why the individual should be detained, or to release the detainee. But because of deliberate delays by government lawyers in filing responses, this process can be lengthy. Lawyers allege that judges take an indulgent view when government counsel argues that they are unable to procure documents, or require official signatures, or employ other delaying tactics. According to Syed Tassadque Hussain, a senior advocate in the High Court:

> This is a problem in most cases. But a habeas petition is the only remedy under the PSA. According to Jammu and Kashmir High Court rules, all habeas corpus petitions are returnable within three weeks, but the judge has discretion of adjournment. Before the militancy, judges used to take these petitions very seriously. But now government lawyers ask for more time, employ delaying tactics, and it is allowed.[423]

For instance, Mohammad Ayub Gujri's case (described below in more detail) was listed eighteen times for final hearing at the High Court in Srinigar but was adjourned each time at the request of the government. As Mian Abdul Qayoom, president of the Jammu and Kashmir High Court Bar Association, told Human Rights Watch, lawyers and detainees are extremely frustrated:

> It is an unending process. Timing is of essence. Liberty matters have to be decided on top priority, but it never happens. In many cases, the petition can languish for years, even after the period of detention is over.[424]

Human Rights Watch knows of no cases in which officials held in contempt of court have been jailed or fined for failing to respond in a timely manner to a court order in a habeas corpus case or for failing to release a detainee pursuant to a court order in Jammu and Kashmir.

Because of the risks of torture or other mistreatment of a person held in custody without judicial oversight, Indian law requires a court to act on habeas corpus petitions as quickly as possible.[425] However, courts in Jammu and Kashmir are overloaded and backlogged, which means that there are inordinate delays in hearings, including those of habeas corpus petitions.

Mian Abdul Qayoom, told Human Rights Watch that at least sixty thousand habeas corpus petitions have been filed since 1990 to contest detentions or "disappearances."[426] Every Tuesday is reserved for hearings on habeas corpus petitions at the Srinagar High Court. Anxious

[423] Human Rights Watch interview with Syed Tassadque Hussain, Srinagar, August 2, 2005.
[424] Human Rights Watch interview with Mian Abdul Qayoom, Srinagar, August 2, 2005.
[425] Constitution of India, 1950, Article 32(2); Constitution of Jammu and Kashmir, 1956, Article 103.
[426] Human Rights Watch interview with Mian Abdul Qayoon, Srinagar, August 2, 2005.

relatives flock to the courts. On a typical day, more than a hundred cases are listed—but the two judges can barely handle of half of them, and often fewer than that.[427]

After the 2002 election, Chief Minister Sayeed said that his government would examine all detention cases and release those persons for whom there were no strong case not to be kept in custody. Mehbooba Mufti, president of the PDP, told Human Rights Watch that this policy was followed and that after her party came to power several people held under the PSA were released at the request of the government. In some cases, public prosecutors were instructed not to challenge petitions seeking to quash detentions.[428] On September 27, 2005, the chief minister told the state assembly that there were 1,197 persons in detention under the PSA when his government took office in November 2002. He said that by September 2005 only 376 remained in detention under the PSA.[429] In October 2005 a further forty-four detainees held under the PSA on suspicion of providing logistical support to the militants were released after Prime Minister Singh, in a meeting with the Hurriyat Conference, promised to review all cases of those detained under the PSA.[430]

However, the volume of habeas corpus petitions in the High Court shows that new detentions are continuing apace. According to High Court records, 443 new cases were filed in 2005 challenging PSA detentions.[431]

In spite of all these hurdles, in some cases, such as those cited below, lawyers have been successful in obtaining judgments declaring a detention illegal and having the individual released. There is some hope. In May 2006, Prime Minister Singh said that, "In the light of the changing environment, we are reviewing the cases of all detainees."[432] It remains to be seen whether this review will take place and whether it will have any effect.

Detention of Bashir Ahmad Najjar, December 25, 2005

On the night of December 24, 2005, security forces surrounded the home of Bashir Ahmad Najjar in Srinagar, and then knocked on the door. When Bashir Ahmad answered, he was immediately taken into custody. A Pakistani militant was hiding inside the house. The security

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[427] On October 17, 2004, Human Rights Watch observed court proceedings to hear habeas corpus petition. One hundred and twenty-four petitions were listed on that day, but only one judge was working while the other was on leave. Barely twenty cases were heard.

[428] Human Rights Watch interview with Mehbooba Mufti, Srinagar, October 18, 2004. In response to a question in state assembly in October 2004, the state government had provided a list of 537 people in detention as of July 31, 2004, including 165 foreigners. See [online], http://www.thevoiceofmillions.com/VOM-9-2003/pakistani_jailers.htm (retrieved February 14, 2005).

[429] "131 Army Men, 68 BSF Personnel Punished for Rights Violations," The Tribune (Chandigarh), September 27, 2005, [online] http://www.jammu-kashmir.com/archives/archives2005/kashmir200.htm (retrieved February 21, 2006).

[430] "Release of 44 Detenus in J&K Ordered," Press Trust of India, October 3, 2005,[online] http://www.rediff.com//news/2005/oct/03detenu.htm (retrieved February 14, 2006).

[431] Srinagar High Court records.

[432] Palash Kumar, "Manmohan Singh Asks Pakistan Based Rebels to 'Come Home,'" Reuters, May 24, 2006,[online] http://in.news.yahoo.com/060524/137/64ibm.html (retrieved May 29, 2006).

forces called out, asking the militant to allow Bashir Ahmad's wife and children to come out safely. A little later, the door opened and the woman and children came out. Soon after, the militant opened fire on the security forces. Bashir Ahmad's house was destroyed in the exchange of fire. The militant was killed.

According to Bashir Ahmad's neighbor, who did not want to be identified, the firing went on for a long time. "His wife and children went to a relative's house. But after the firing ended and the militant was killed, we found that Bashir Ahmad was missing."[433]

For ten to twelve days, Bashir Ahmad "disappeared." His relatives went to various police stations hunting for him, but there was no news. Finally, his relatives were summoned to the Parampora police station where they were allowed to meet Bashir Ahmad. But as of February 2006, he was still in custody, and no charges had been brought against him.

Detention of Farooq Ahmad Dar ("Bittakaratay"), November 2, 2005

Farooq Ahmad Dar, known as "Bittakaratay," has been in detention under the PSA since 1990. He was arrested for a number of killings of Hindu Kashmiris in 1989 and early 1990. He has never been tried for these crimes.

In 2004, Farooq Ahmed's lawyer appealed to the Indian Supreme Court, challenging his detention. The government, in its response, claimed that Farooq Ahmad had refused to receive a copy of the detention order and also refused to put his signature on the document. They asked for time to file more details.[434]

On November 5, 2004, the Supreme Court refused the request for "an extension of time" and quashed the detention, saying that the grounds of detention that not been properly explained to the detainee. However, it then allowed a fresh detention, saying: "Learned counsel of the State submitted that there is no bar on a fresh order of detention being passed. We do not express any opinion in this regard. In the present proceedings, the order of detention of the detenue is quashed. This, however, shall not stand in the way of such action being taken by the State and/or any authority in accordance with law."[435]

The government immediately detained Farooq Ahmad under a new detention order dated the same day. This order was once again challenged in the Supreme Court, as no fresh grounds for detention had been filed. Saying that a number of criminal cases had been filed against the

[433] Human Rights Watch interview, name withheld, Srinagar, February 25, 2006.
[434] Human Rights Watch interview with Parvez Imroz, lawyer, Srinagar, February 25, 2006.
[435] Ibid.

detainee, the writ petition noted, "If a series of criminal cases have been filed against the detenue, the state can very well proceed against him in accordance with law."[436]

A year later, even as the writ petition was being heard in the Supreme Court, Farooq Ahmad was once again detained under the PSA under a fresh magisterial order on November 2, 2005.[437] The order described Farooq Ahmad as a member of the Jammu Kashmir Liberation Front, a group blamed in the order for "waging war against the lawfully established government by indulging in subversive and disruptive activities and by inculcating separatist feelings and a sense of terror and insecurity in the minds of peace loving people through killing of innocent people whom they consider an obstruction in the achievement of their nefarious goal."[438] He was accused of remaining in touch with terrorists and various militant organizations, and of "motivating his fellow inmates to re-group and re-join militancy."[439] The detention order also named his fellow inmates who had testified that he had encouraged them to join the militancy, and it stated that "[Farooq Ahmed's] remaining at large in case of release, at the time when agents of terrorism are hyperactive, is likely to result in repetition of anti-national activities."[440]

Yet, almost sixteen years after his arrest, these remain unproven allegations. Whatever crimes he may have committed, the state has never tried to prove them in a court of law. Instead, the state has violated international law by holding him in long-term, indefinite detention.

Detention of Shamim Ahmad Yatoo, September 25, 2005

Shamim Ahmad Yatoo was arrested for militancy in 1999. He remained in jail for two years. After he was released, he claims that he ended his association with militants.

On September 25, 2005, Shamim Ahmad was at his hardware shop in Budgam when security forces in civilian clothes came and took him into custody. A neighboring shopkeeper ran to inform his family. His father, Mohammad Ramzan Yatoo, rushed to the local police station asking about his son. They had no news. A police complaint reporting a missing person case was filed. Mohammad Ramzan contacted his legislator and also met with government minister Abdul Rahman Rather to ask for help.

For four days, there was no news of Shamim Ahmad. Then a newspaper reported that he had been killed in an encounter. Shamim Ahmad's friends, relatives, and neighbors held a demonstration, blocking traffic. Says Mohammad Ramzan:

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[436] Writ Petition No. 8 of 2004, State Legal Aid Committee J&K on behalf of Farooq Ahmad Dar versus State of J&K and others, November 13, 2004. Copy on file with Human Rights Watch.

[437] Order of Detention dated November 2, 2005. Copy on file with Human Rights Watch.

[438] Grounds of Detention of Farooq Ahmad Dar, November 2, 2005. Copy on file with Human Rights Watch.

[439] Ibid.

[440] Ibid.

> The police came because we had stopped traffic and burnt tires. They even fired in the air to disperse us. Then some government officials arrived. I told them, if my son is dead, give me his body. If he is alive, then produce him. If you want to arrest him, tell me why he has been arrested.[441]

The officials promised an inquiry and the next day Mohammad Ramzan was summoned to a police interrogation center, a former airport building still called "Cargo" in Srinagar. There, Shamim Ahmad was handed over to his father. No charges had been filed against him.

Shamim Ahmad claims that he was beaten up while in custody. He said that he was questioned about a friend who had joined the militants at the same time as he had, but who was still operating as a militant.

Mohammad Ramzan Yatoo says he will not file a complaint about the illegal detention of his son. "We are only happy to have our boy back. We don't want any more trouble."[442]

Detention of Miraj-ud-din Sofi, August 2005

Miraj-ud-din Sofi, a militant belonging the Harkat-ul-Mujahedin, was first arrested and charged with illegal possession of weapons and conspiring against the state in June 2002. Some weeks earlier, on April 13, 2002, when he was allegedly preparing an attack on a BSF post, a grenade exploded prematurely and blew off his hand.[443] According to his brother, Maraj-ud-din Sofi was taken into custody from the hospital.[444] For six months, the family had no news of his whereabouts.[445]

The family finally discovered that he was in jail in Jammu. By then, not only had charges been filed against him, but he had also been detained under the PSA on July 2, 2002. According to his lawyers, his detention order stated that he was being detained because he was allegedly involved in various attacks as a member of the Harkat-ul-Mujahedin.[446]

However, his lawyer said that Miraj-ud-din was never produced in court for a hearing in any of the cases filed against him. In August 2004, after his maximum two-year PSA detention period was over, he was brought to the Safa Kadal police station in Srinagar. His family was informed by the police that he would be released. Instead, he was then detained and shunted from one police station to another. According to his brother, Shabir Ahmed, the family went from station to station begging for information. At each station they were directed to another police station

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[441] Human Rights Watch interview with Mohammad Ramzan Yatoo, Budgam, February 25, 2006.
[442] Ibid.
[443] Human Rights Watch interview with Mohammad Altaf, lawyer, Srinagar, August 6, 2005.
[444] Human Rights Watch interview with Shabir Ahmad, brother of Miraj-ud-din Sofi, Srinagar, August 6, 2005.
[445] Ibid.
[446] Ibid.

where he was then being held. On some occasions his mother was allowed to meet him. "She can barely walk. She would meet my brother for a few minutes and then cry for days."[447]

On August 3, 2005, Miraj-ud-din Sofi "disappeared" again. His family and lawyers were worried because they thought he might be killed in a faked encounter. After initially refusing to give his family any information, a police officer told his brother that he had been moved to a jail in Jammu and that new detention orders would be issued.[448] "That is relief for us," said his lawyer, Altaf Mohammad. "If he is in jail, entered into the official records, then he is safe from torture or from being killed."[449]

Detention of Firdaus Ahmed Sheikh, May 2005

Firdaus Ahmed Sheikh, a twenty-two-year-old carpet weaver, was first detained in June 2003 near his home in Pattan. Initially, the family was not informed and they filed a missing person report at the local police station. A few days later, the police informed the family that Firdaus Ahmed was being detained under the PSA at the Kot Bhalwal Jail in Jammu. His family then filed a habeas corpus petition in the High Court.

According to his mother, Shamima, two militants had been arrested in Pattan. She heard from someone in the police that during interrogation they told the army that they had stopped for a meal with Firdaus Ahmed, which led to his arrest.

In January 2005, Firdaus Ahmed's detention was quashed by the Srinagar High Court. Firdaus Ahmed was sent to the local police station, from where he was supposed to be released. But in violation of the court order he was not released. According to his mother:

> I used to go to the police station every day to bring my son back home. But every day, the police would tell me that Firdaus would be released later. They promised that they would let him go, but they never did.[450]

In May 2005, Firdaus Ahmed was once again formally detained under the PSA. A new habeas corpus petition seeking to quash his detention was filed on July 20, 2005. His detention was quashed once again in November 2005, but as of March 2006, Firdaus Ahmed had not been released.

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[447] Human Rights Watch interview with Shabir Ahmed, August 6, 2005.
[448] Ibid.
[449] Human Rights Watch interview with Mohammad Altaf, lawyer, Srinagar, August 6, 2005.
[450] Human Rights Watch interview with Shamima, mother of Firdaus Ahmed Sheikh, Srinagar, August 2, 2004.

Detention of Mohammad Yousuf Dar, April 14, 2005

Mohammad Yousuf Dar, a final-year science student at a college in Anantnag, was taken into custody at 11:30 p.m. on April 14, 2005, after a joint police and army raid. According to a police complaint filed against him, he was accused of being a member of the Hizb-ul-Mujahedin, involved in the murder of a former militant, and of storing weapons. On April 14, 2005, Mohammad Yousuf was taken to a jail in Jammu and booked under the PSA.

Mohammad Yousuf's father, Ghulam Hassan Dar, filed a petition in the High Court seeking to have his son's detention quashed, and on November 25, 2005, the High Court quashed the detention. However, as of February 20, 2006, Mohammad Yousuf had not been released.[451]

Detention of Ghulam Mohammad Tantray, March 2004

Ghulam Mohammad Tantray, a police driver, was arrested on January 7, 2004. His wife, Musamat Saja, found out about the arrest when his colleagues informed her. She did not know where he had been taken. The next day, police searched the house but, according to Musamat, who was present during the search, they found nothing. However, the police later filed a report claiming that they had recovered grenades, and Ghulam Mohammad was charged under the Arms Act.

Ghulam Mohammad was granted bail by a district court in March 2004, but was not released. His wife then filed an appeal in the High Court. The police told the court that he had indeed been set free on bail—but then immediately detained under the PSA as a way for the authorities to ignore the bail order. His family filed a habeas corpus petition to have his detention under the PSA quashed. The court granted this request and the detention was quashed on procedural grounds. He was released.

Detention of Mohammad Ayub Gujri, November 2003

In May 2003, Mohammad Ayub, a tourist taxi driver from Pattan, Baramulla, applied for a job with the police. After a thorough check by intelligence agencies to ensure that he had no militant affiliations, Ayub was taken on as a constable and enrolled in the required nine-month training program at the Police Training School in Kuthwa.

In November 2003, Mohammad Ayub's family was informed by some of his fellow students that he had been arrested for murder. Although bail was granted in the murder case, Ayub was not released. Instead he was detained under the PSA. In September 2004, Ayub was acquitted in the murder case. But he remained in detention under the PSA.

[451] Human Rights Watch interview with Parvez Imroz, lawyer, Srinagar, February 20, 2006.

Ayub's detention was challenged in the High Court. The police claimed that Ayub had been arrested from his home in Pattan on January 26, 2004, for a grenade attack and for transporting militants. But on January 26, 2004, say his relatives, Ayub was already in jail facing murder charges and could not possibly have been in Pattan. According to his father, Noor-ud-din Gujri:

> My son is being held on false charges. He was thoroughly verified by the government before he was recruited and he has no links with the militants. He was in jail when this grenade attack took place. If they can prove he is guilty, I will say, "Keep him in jail for the rest of his life." But there is no decision. Either the judge is not there or there is some other excuse. We have no hope that he will ever be released.[452]

As it was impossible for Ayub to have been in Pattan at the time of the grenade attack, his detention was quashed in March 2005 and he was released. However, he was not reinstated to his police job.

Detention of Nek Mohammad Chechi, August 2003

According to the police, Nek Mohammad Chechi, a resident of Uri, was arrested in Srinagar on July 7, 2003. He was alleged to be carrying illegal weapons and waiting to deliver them and cash to a militant, as he had several times in the past.[453] He also allegedly helped militants cross the border from Pakistan-administered Kashmir, provided shelter to them, and stored their weapons and ammunition. The police claimed they had recovered grenades, a detonator and cash from him, registered a criminal case, and charged him under the Arms Act.[454]

Nek Mohammad had lost his leg when he had stepped on a landmine while helping militants cross the border in 1992. Despite this accident, he allegedly continued to support militants.[455]

Nek Mohammad's lawyers say he was in Srinagar for the treatment of his amputated leg and that the police had made false claims about the possession of weapons and cash at the time of his arrest.[456] He was granted bail on July 30, 2003. But the police failed to release him. His lawyers then filed a habeas corpus petition. The police did not respond to the petition, instead detaining Nek Mohammad on August 30, 2003, under the PSA, citing the charges that had been filed against him.[457]

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[452] Human Rights Watch interview with Noor-ud-din Gujri, Srinagar, October 12, 2004.

[453] Ibid.

[454] The Arms Act, 1959, regulates the acquisition and possession of arms, firearms and ammunition.

[455] "Chechi – a hardcore motivator, lost his leg in militancy operation: Police," *The Daily Excelsior*, August 23, 2004, [online] http://www.dailyexcelsior/com/web1/04aug24/state.htm (retrieved February 14, 2006).

[456] Human Rights Watch interview with Riaz Ahmad, lawyer, Srinagar, October 10, 2005.

[457] Human Rights Watch interview with Mian Abdul Qayoon, president, High Court Bar Association, Srinagar, August 4, 2005.

His lawyers challenged this detention, too, and on August 21, 2004, the High Court quashed the detention and ordered his release. However, security personnel arrived at the court and attempted to take him back into custody. When lawyers present at the court protested, they were manhandled by the police. Newspaper accounts of Nek Mohammad's re-arrest and the police action against lawyers led to an intervention by the National Human Rights Commission, with its Chairperson, Justice A.S. Anand, observing that if the reports were true, "it raises serious issues of violation of human rights."[458] The police claimed that Nek Mohammad was taken into custody because he was wanted in another case.[459]

Nek Mohammad was eventually released from detention in May 2005.[460] No evidence was ever offered in court of any criminal act.

[458] National Human Rights Commission, "PSA Detenue Freed and Rearrested; Comments Sought From J&K Government," September 8, 2004, [online] http://nhrc.nic.in/disparchive.asp?fno=794 (retrieved May 23, 2006).

[459] "Chechi – hardcore motivator, lost his leg in militancy: Police," *The Daily Excelsior*, August 23, 2004.

[460] Human Rights Watch interview with Mian Abdul Qayoom, president, High Court Bar Association, Srinagar, August 4, 2005.

VI. Militant Abuses

> *"These people can kill anyone at any time. Earlier, the militants were our own people, so if there was some problem, we could go and sort it out with the family or send a message. Now, who knows who they are or what they want…. I dare not complain or my other sons will die too."*
>
> —Human Rights Watch interview with the mother of a man killed by militants[461]

As India and Pakistan prepared to roll out a bus service between Srinagar and Muzaffarabad on April 7, 2005, allowing Kashmiri families separated for nearly six decades by the Line of Control to meet with each other, Indian troops lined the road to the border.[462] The irony was evident. To protect Kashmiris from militants ostensibly fighting on their behalf, it was the abusive Indian army that was deployed along the road—a road whose reopening was welcomed by ordinary Kashmiris. It was Indian security forces who walked the entire stretch of the route, looking for mines planted by militants, keeping their eyes and ears open to prevent an ambush. In Srinagar, as an extra security measure, it was police officers, and not the passengers themselves, who lined up to pick up and then pass out tickets for that first bus journey.

Kashmiris had responded with enthusiasm to the bus and there was a rush to reserve seats.[463] However, in a statement, armed groups threatened to derail the proposal, warning that the passengers entering the bus would be entering their "coffin."[464] A statement issued in the name of four little known groups was faxed to journalists in Jammu and Kashmir.[465] The name of each passenger who had reserved a seat on the bus was included in the statement, and some of them received threatening telephone calls. A second statement issued on April 2, 2005, warned:

> We are telling the people once more not to take a pleasure ride on a bus that will be traveling on the bodies of thousands of martyrs who have died for the cause of Kashmir. Don't invite death.[466]

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[461] Human Rights Watch interview, name withheld, Srinagar, July 2005.

[462] "Reunited Kashmiris' Tears of Joy," BBC News, April 7, 2005, [online] http://news.bbc.co.uk/2/hi/south_asia/4419109.stm (retrieved August 15, 2005).

[463] "Kashmiris Clamor For Bus Permits," BBC News, March 14, 2005, [online] http://news.bbc.co.uk/1/hi/world/south_asia/4348067.stm (retrieved August 15, 2005).

[464] Yusuf Jameel, "Indo-Pak Bus Is A Coffin: Militants," *The Asian Age*, March 31, 2005.

[465] The statement was signed by Al Nasireen, Al Arifeen, Save Kashmir Movement and Farzandan-i-Millat, all of them suspected to be fronts for or associated with the Lashkar-e-Toiba.

[466] M. Saleem Pandit, "'We are Calling UP Passengers,' Warn J & K Militant Groups," *The Times of India*, April 3, 2005.

On April 6, 2005, a day before the bus service was due to start, militants attacked the Tourist Reception Center in Srinagar, where the passengers had been put up. Six persons were injured and one of the gunmen killed, and part of the reception center burned down.[467]

In defiance of the threats from the militants, the passengers—and the governments—went ahead with the journey. Kashmiris on both sides of the Line of Control lined the streets, waving and greeting the passengers.[468] Both the Indian and Pakistani governments, as well as many in the media, criticized the threats and the attack on the tourist center. According to M.J. Akbar, a Kashmir expert and editor of the *Asian Age*:

> Those who believed that terrorism would succeed clearly did not think through the consequences. Their guns were trained on ordinary Kashmiris, the very people they were seeking to "liberate."[469]

From the earliest years of the conflict, militant organizations fighting for Jammu and Kashmir's independence or accession to Pakistan have committed grave human rights abuses and violations of international humanitarian law. Although independent figures are not available, militant attacks are believed to have resulted in the loss of thousands of civilian lives.[470]

In the early years of the conflict, many Kashmiris refused to believe that the militants were capable of human rights abuses. That has changed. During our research, villagers often provided accounts of both militant abuse and abuses by government troops. Even Kashmiri leaders, who for a long time refused to acknowledge abuses by people they call "freedom fighters," are finally admitting to violations by the armed groups. Said Abdul Ghani Bhat, a leader of one faction of the All Parties Hurriyat Conference, now admits that his brother was killed by a militant group and not by security forces as he had claimed for years:

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[467] "Guerrillas Attack Kashmir Bus Yard," Indo Asian News Service, April 6, 2005, [online] http://in.news.yahoo.com/050406/43/2kl96.html (retrieved August 15, 2005); "Kashmir Tourist Center Attacked," CNN, April 7, 2005, [online] http://edition.cnn.com/2005/WORLD/asiapcf/04/06/kashmir.violence/index.html (retrieved August 15, 2005).

[468] "Reunited Kashmiris' Tears of Joy," BBC News, April 7, 2005, [online] http://news.bbc.co.uk/2/hi/south_asia/4419109.stm (retrieved August 15, 2005).

[469] M.J. Akbar, "The Next Moment," *The Asian Age*, April 10, 2005.

[470] The Indian government reports that there were 61,935 militant attacks from 1990 to January 31, 2005, claiming 12,542 civilian lives. Ministry of Home Affairs, Annual Report 2004-2005. Annexure-II p. 164. The New Delhi based South Asia Terrorism Portal, which collects data on insurgencies in South Asia, says that news accounts reported that nearly 14,000 civilians in Jammu and Kashmir had been killed in terrorist violence up to April 2006. Nearly 5,500 security forces personnel and over 20,500 alleged militants have also been killed. See "Annual Fatalities in Terrorist Violence 1988-2006," [online] http://www.satp.org/satporgtp/countries/india/states/jandk/data_sheets/annual_casualties.htm (retrieved April 14, 2006).

> My message to these people is that when you are fighting for a cause that you believe is noble, you cannot do such ignoble things. It does not serve the cause.[471]

Armed opposition groups, as well as government forces, are obliged to abide by international humanitarian law. While attacks by armed groups on military targets violate domestic law, they are normally not violations of international law. Prohibited are attacks against civilians and civilian objects, attacks that do not discriminate between military targets and civilians, and attacks on military targets that cause disproportionate loss of civilian life. Killings of government officials, politicians, and civilians assisting the authorities, and who are not directly participating in the hostilities, are thus unlawful. Captured combatants and detained civilians must be treated humanely at all times.

* * *

Militants have been responsible for a long string of massacres, attacks on minority Hindus and Sikhs, bombings, killings and attacks on schools. The most recent massacre was in May 2006, when thirty-five Hindus were killed in remote hamlets of Doda and Udhampur districts; police blamed the Pakistan-based Lashkar-e-Toiba.[472]

Despite their scale and frequency, abuses by militants in Jammu and Kashmir are seldom carefully documented. One reason for this is that militant groups are not state actors. Even the State Human Rights Commission says that it concentrates on abuses by state agencies.[473] Another reason is that Pakistan seems beyond the reach of Kashmiri NGOs and victim groups.

Another explanation is that within Jammu and Kashmir there is greater political sympathy for the militants' cause than for the government. Violations by armed groups are rarely opposed as vociferously as those committed by Indian security forces.

But a key reason for the lack of attention is less widely discussed: people are afraid that they too will be targeted. In interviews with Human Rights Watch, ordinary Kashmiris, as well as journalists and human rights defenders, said that there was deep fear in Jammu and Kashmir of the militants. Militant abuses have been brutal, plentiful, and continuous against anyone seen to be opposed to their agenda. To give one example, in July 2004 militants barged into the home of fifty-five-year-old Mohammed Shafi and decapitated him because they thought he was a police

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[471] Human Rights Watch interview with Abdul Ghani Bhat, a leader of the All Parties Hurriyat Conference, Srinagar, October 12, 2004.

[472] Ashok Pahalwan, "Thirty Five Hindus Massacred In Kashmir Ahead Of Talks," Reuters, May 1, 2006, [online] http://www.alertnet.org/thenews/newsdesk/DEL343092.htm (retrieved May 20, 2006).

[473] Human Rights Watch interview with Justice A.M. Mir, chairperson of the State Human Rights Commission, Srinagar, October 15, 2004.

informer. They also beheaded his twenty-two-year-old son and fifteen-year-old daughter.[474] In August 2004, Ghulam Hussain, his two sons and a daughter were shot dead. According to police, militants had targeted the family because a third son, who was not at home during the attack, was with the state police.[475]

Kashmiris who help the armed forces, particularly special police officers (SPOs)[476] and members of Village Defense Committees (VDCs),[477] have been particularly targeted. On August 13, 2005, alleged militants killed five people and wounded nine others when they attacked families of VDC members.[478] On August 9, 2005, the body of SPO Zubai Ahmad was found hanging from a tree near his home after he had been abducted.[479] On April 25, 2004, alleged militants beheaded the wife and eight-year-old daughter of SPO Ghulam Hassan Qureshi in Baramulla.[480]

As militant groups lost ground to security forces, they have increasingly made indiscriminate use of bombs, grenades, landmines, and other explosive devices, with predictable civilian casualties. According to Landmine Monitor, at least five militant groups have used such devices.[481] For instance, on November 3, 2005, six people including four civilians were killed, and over twenty injured, in a car bomb explosion by the Jaish-e-Mohammad militant group in Srinagar.[482] Two weeks later, a grenade attack during a public meeting of PDP leader Ghulam Hassan Mir in Baramulla killed four people.[483] In an effort to disrupt a conflict resolution conference organized by Prime Minister Singh in May 2006, militants launched a number of grenade attacks, injuring twenty-

[474] "Kashmir Rebels Bomb Hospital, Behead Three," Reuters, July 26, 2004, [online] http://www.jammu-kashmir.com/archives/archives2004/kashmir20040726d.html (retrieved September 3, 2004).

[475] "Five Killed in Kashmir Violence," BBC News, August 18, 2004, [online] http://news.bbc.co.uk/go/pr/fr/-/2/hi/south_asia/3576458.stm (retrieved April 14, 2006).

[476] Special Police Officers (SPOs) are Kashmiris hired on fixed-term contracts to work in and around the areas they belong to. As such, they not only act as conventional troopers, but liaise between the community and the police force. As previously noted, many militants, after they surrendered, have been hired as SPOs.

[477] Indian security agencies have organized groups of villagers, many of them minority Hindus, in remote areas of Jammu and Kashmir into village defense committees and provided them arms and training to protect themselves against militant attacks.

[478] "Five Hindus Shot Dead in Indian Kashmir," Reuters, August 13, 2005, [online] http://go.reuters.com/newsArticle.jhtml?type=worldNews&storyID=9365011&src=rss/worldNews (retrieved August 16, 2005).

[479] "SPO Hanged to Death by Militants," Press Trust of India, August 10, 2005, [online] http://www.expressindia.com/kashmir/full_story.php?content_id=52490&type=ei (retrieved August 16, 2005); "Five Ultras Among Nine Killed in J&K," Press Trust of India, August 3, 2005, [online] http://www.expressindia.com/kashmir/full_story.php?content_id=52052&type=ei (retrieved August 16, 2005).

[480] "Militants Behead J&K Cop's Wife, Daughter," Press Trust of India, April 25, 2004, [online] http://www.rediff.com//news/2004/apr/25jk.htm (retrieved April 13, 2006).

[481] The Landmine Monitor Report 2005 said that at least five militant groups including the Lashkar-e-Toiba Hizb-ul-Mujahedin, Harkat-ul-Jihadi Islami, Jaish-e-Mohammad and Harkat-ul-Ansar, have used antipersonnel mines, antivehicle mines or IEDs. See [online] http://www.icbl.org/lm/country/India (retrieved March 13, 2006).

[482] Shujaat Bukhari, "6 Killed, 20 Injured As Car Bomb Explodes Near Srinagar," *The Hindu*, November 3, 2005, [online] http://www.thehindu.com/2005/11/03/stories/2005110312070100.htm (retrieved April 14, 2006).

[483] "Strike 3 in 3 days: Srinagar Bomb Kills 4, injures 40," *The Indian Express*, November 17, 2005, [online] http://www.indianexpress.com/res/web/pIe/full_story.php?content_id=82103 (retrieved April 13, 2006).

three, most of them civilians.[484] On May 22, 2006, two militants opened fire at a Congress party rally in Srinagar, killing six, including three civilians, and injuring thirty-five; the militants were also killed. Two militant groups, Lashkar-e-Toiba and Al Mansoorian, claimed responsibility.[485]

Indian paramilitary soldiers check the ID of local Kashmiri men trying to gain access to their offices the day after an attack by suspected Pakistani Islamist militants in the center of Srinagar's business district, July 30, 2005. Militants opened fire on nearby Indian security positions, stopping afternoon rush hour traffic and pinning down hundreds of soldiers and police. Five security men were killed and six other people were wounded, including local journalists caught in the crossfire. Two of the suspected militants were killed. © 2005 Robert Nickelsberg

Some of the most egregious militant abuses have been carried out against members of Kashmir's religious and ethnic minorities. This risks turning what has been primarily a political conflict into a religious one, something that many Kashmiri Muslims say they are worried about. Since the conflict began, there have been at least twenty massacres of minority groups in which militant gunmen have specifically targeted and then indiscriminately fired upon groups of unarmed civilians, usually in the middle of the night when they were asleep.[486] A day after the October 2005 earthquake that killed over seventy thousand people, most of them in Pakistan-administered Kashmir, militants murdered ten Hindus in Rajouri district.[487] In July 2005, five Hindu men were separated from their Muslim

[484] Mukhtar Ahmed, "5 Terror Strikes During PM visit," Rediff.com, May 24, 2006, [online] http://in.rediff.com/news/2006/may/24jk1.htm (retrieved May 29, 2006).

[485] Shujaat Bukhari, "Militants Target Srinagar Rally, 6 Killed," *The Hindu*, May 22, 2006, [online] http://www.hindu.com/2006/05/22/stories/2006052214410100.htm (retrieved May 29, 2006).

[486] South Asia Terrorism Portal, "Major Terrorist Attacks on Hindus in Jammu and Kashmir since 1997," [online] http://www.satp.org/satporgtp/countries/India/states/jandk/data_sheets attack_hindu.htm (retrieved March 13, 2006).

[487] Praveen Swami, "Terror Amidst Death," Frontline, October 22-November 4, 2005, [online] http://www.flonet.com/fl2222/stories/20051104003902000.htm (retrieved March 13, 2006).

neighbors by alleged militants, and their throats slit.[488] In 2003, after militants killed twenty-four Hindu *pandits* in Nadimarg near Srinagar, including eleven women and two children, many *pandits* fled to Hindu-majority Jammu.[489] They joined the nearly sixty thousand Hindu families who have been internally displaced from Muslim majority areas by the threats and attacks of militant groups.[490] Recent attempts by moderate separatist leaders to bring them back home have been opposed by militants, who issued a statement in July 2005 saying: "We impose a ban on the return of Kashmiri *pandit* migrants to the Valley."[491]

Militants have targeted Kashmiri Muslims in large numbers because of their suspected support for the Indian government, or because they otherwise opposed the policies or practices of one or another of the militant groups. According to the Mumbai-based International Center for Peace Initiatives, nearly 85 percent of those killed by militants have been Kashmiri Muslims.[492]

Militants say they are in favor of self-determination, which can only be determined by a vote, yet they target individuals who participate in elections. Alleged militants have killed at least 571 political party workers, election candidates, and elected leaders between 1989 and March 2005.[493] Many more have come under attack. Officials conducting polls have also been cruelly treated.[494] While militant groups seldom claim responsibility for such attacks, or do so under previously unknown names, most families of victims interviewed by Human Rights Watch placed responsibility with the militant groups. In some cases the victims had received anonymous warnings before they were killed.

Some armed groups have threatened and attacked journalists, broadly undermining free expression and the media in Kashmir. On February 9, 2006, activists from one faction of the Jammu Kashmir Liberation Front (JKLF) ransacked the Srinagar office of the daily *Greater Kashmir* and assaulted its employees, demanding that the group's press releases be published.[495] Journalists interviewed by Human Rights Watch said that they had received anonymous threatening phone calls from alleged militants demanding coverage of their statements or

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[488] "Militants Slit Hindus Throats," BBC News, July 29, 2005, [online] http://www.jammu-kashmir.com/archives/archives2005/kashmir20050729d.html (retrieved March 13, 2006).

[489] "28 Hindus Migrate to Jammu from Valley," Press Trust of India, April 10, 2003, [online] http://www.kashmirlive.com/full_story.php?content_id=20427&type=ei (retrieved August 16, 2005).

[490] Ministry of Home Affairs, Annual Report, 2004-2005, p. 27.

[491] "We Ban Return of Pandits to Valley: Militants," *The Indian Express*, July 23, 2005, [online] http://www.kashmirlive.com/full_story.php?content_id=51273&type=ei (retrieved August 16, 2005).

[492] International Center for Peace Initiatives, "Cost of Conflict Between India and Pakistan," 2004, p. 65.

[493] South Asia Terrorism Portal, "Political Activists Killed by Terrorists in Jammu and Kashmir, 1989-2005," [online] http://www.satp.org/satporgtp/countries/india/states/jandk/data_sheets/political_assination.htm (retrieved April 13, 2006).

[494] "Militants Chop Off Ears of Two on Election Duty," *The Indian Express*, April 21, 2004, [online] http://www.jammu_kashmir.com/archives/archives2004/kashmir20040421d.html (retrieved March 13, 2006).

[495] "Newspaper Office Ransacked in Srinagar," Press Trust of India, February 9, 2006, [online] http://www.tribuneindia.com/2006/20060210/j&k.htm#2 (retrieved March 13, 2006).

disagreeing with the description of events in their news reports.[496] Often, they end up reporting unsubstantiated claims by so-called militant groups. As one journalist explained:

> We can never be sure if these callers are legitimate, nor can we afford to ignore them because that would mean risking annoying the militant groups.[497]

Some women have also been punished for not adopting Islamic dress codes as demanded by some militant groups.[498] Cable television operators, beauty salons, and Internet centers have been targeted for promoting "immorality." In May 2006, cable operators were once again asked not to broadcast some channels.[499] Recently, the Pakistan-based Harkat-ul-Jihadi-Islami has asked women to stop using mobile phones or to visit public parks.[500]

Militant groups and Pakistan's role in the conflict

Although the rebellion in Jammu and Kashmir began as an indigenous movement, from the outset the armed response was actively supported and fueled by Pakistan.[501]

The earliest efforts to oppose Indian rule were started by the pro-independence Jammu Kashmir Liberation Front in 1988. It found enormous support in Jammu and Kashmir. The JKLF was responsible for some acts of violence, including the 1989 abduction of the daughter of Home Minister (later Jammu and Kashmir Chief Minister) Mufti Mohammad Sayeed and attacks on some Hindu Kashmiri *pandits*, but it also led a largely peaceful people's movement. As described in Section II, above, heavy-handed counter-insurgency efforts by the Indian government followed, with brutal crackdowns and firing on unarmed protesters. At the same time, hundreds of young Kashmiris began to cross the Line of Control for arms and training in Pakistan. One former militant described that time to Human Rights Watch:

> I was about fifteen. Still in school. I decided to go too…. Why? Well, everyone was going and they would laugh if you did not. And also, everyone had a gun and it seemed important that I should have one too, just in case.[502]

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[496] Human Rights Watch interviews with two journalists in Srinagar, names withheld, July 2005 and March 2006.

[497] Human Rights Watch interview with journalist, name withheld, Srinagar, October 13, 2004.

[498] Sudha Ramachandran, "Where Beheadings Also Strike Fear," Asia Times Online, June 29, 2004, [online] http://www.jammu-kashmir.com/archives/archives2004/kashmir20040629c.html (retrieved May 29, 2006).

[499] "Terrorist Threats Switch Off Kashmir Cable TV," Indo Asian News Service, May 12, 2006, [online] http://in.news.yahoo.com/060512/43/647e2.html (retrieved May 29, 2006).

[500] "Kashmir Militant Group Prohibits Women From Using Mobiles," *The Indian Express*, May 29, 2006.

[501] See Background for details.

[502] Human Rights Watch interview, name withheld, Srinagar, March 2, 2006.

When this man arrived at the training camp, he met his elder brother there, who forced him to go back:

> He said that our mother would be very upset if both her sons disappeared like this. I did the training and brought the gun back. But I did not take part in any operations. Later, I was scared that the police would come looking for weapons, so I gave away the gun and went back to school.[503]

Like this man, in the early days the militants were overwhelmingly Kashmiris from the central valley, many from Srinagar. Later, Pakistan's Inter Services Intelligence (ISI) began promoting another Kashmiri group, the Hizb-ul-Mujahedin which supported accession to Pakistan and was opposed to the JKLF's pro-independence stance.

By the end of 1990, many members of the JKLF had begun to come under attack from the Hizb-ul-Mujahedin. But even if they joined organizations such as Hizb-ul Mujahideen, most Kashmiri militants were essentially secular nationalists seeking the liberation of Jammu and Kashmir from Indian rule. Kashmiri-speaking, they were also culturally and linguistically distinct from the peoples of Azad Kashmir. Most had little or no idea what Azad Kashmir was beyond a vague awareness that it was "Azad" (free) under Pakistani control and would be the logical base from which to take on the Indian state. At the time, Kashmiris held Pakistan in higher regard than India.[504]

In 1994, the JKLF, the engine of the Kashmiri nationalist movement, declared a unilateral ceasefire which has remained in effect ever since. The JKLF no longer has any military capacity, but it has a large political presence and a great deal of public support, particularly in Srinagar.

The withdrawal of the JKLF from armed opposition opened the way for Pakistan-based groups to dominate the insurgency. The situation transformed dramatically in 1994 when the ISI organized thirteen groups operating in Jammu and Kashmir into the United Jihad Council (also known as the Muttahida Jihad Council). Apart from the Hizb-ul-Mujahedin, the other members included the Harkat-ul-Ansar, Jamiat-ul-Mujahedin, and Al-Jihad. Kashmiris were largely replaced by Pakistani members of these groups.[505] Many villagers from the higher forested areas in the mountains told Human Rights Watch that the armed gunmen operating in their areas were Urdu-speakers—that is, from Pakistan.[506]

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[503] Ibid.

[504] Human Rights Watch, India: Arms and Abuses in Indian Punjab and Kashmir, (New York: Human Rights Watch, 1994), [online] http://www.hrw.org/campaigns/kashmir/1994/.

[505] According to Indian analysts, this is proved by the increasing number of foreign militants, most of them Pakistani, who have been arrested or killed in Jammu and Kashmir.

[506] Human Rights Watch interviews with Kashmiris from Anantnag and Kupwara districts, October 2004 and July 2005.

By early 1999, there were only four or five groups within the United Jihad Council that were considered militarily effective, including the Lashkar-e-Toiba, Hizb-ul-Mujahedin, Al Badr, and Harkat-ul-Mujahedin. In a special report by the United States Institute of Peace, a Kashmiri civil servant, Wajahat Habibullah, wrote:

> [The insurgents] were financed, supplied, and trained by Pakistan's Inter Services Intelligence Directorate (ISI), which was still relishing its success in assisting the Afghans in their resistance against the Soviet occupation…. The insurgency quickly dissipated into a struggle for domination among different insurgent groups, and what had begun as an ethnic conflict was given a religious color by the ISI, which promoted religiously oriented outfits.[507]

Islamabad had always denied that militant groups operating in Jammu and Kashmir were based in Pakistan.[508] Since Pakistan joined the U.S.-led "war on terror" in 2001, however, the United Jihad Council has ceased to operate publicly. Several groups have changed their names and operate independently or through clandestine underground networks.[509] Previously, militant groups would sometimes admit to killings. Since September 11, 2001, statements are now often issued in the names of previously unknown groups, bringing into question whether these groups genuinely exist or are just front organizations. For example, in Jammu and Kashmir a spokesman claiming to represent the "Save Kashmir Movement" has recently been calling journalists and faxing statements.[510] Journalists and Indian intelligence agencies believe that the group is a front for the banned Lashkar-e-Toiba. After a series of bomb blasts in New Delhi on October 29, 2005, that killed over fifty civilians, a little-known group called Islami Inqilabi Mahaz claimed responsibility. Police later arrested a Kashmiri man called Tariq Ahmed Dar in Srinagar, who is suspected to be a member of Lashkar-e-Toiba. In March 2006, a series of bomb blasts in Varanasi killed twenty people. While an unknown group called Lashkar-e-Qahar had called journalists in Jammu and Kashmir to claim responsibility and threaten more attacks, the police later claimed to have killed the main militant responsible in an armed encounter in Jammu and Kashmir. The man was reportedly an Indian citizen and a member of the Harkat-ul-Jihadi-Islami, an organization with links to the Pakistan-based Jaish-e-Mohammad.[511]

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[507] Wajahat Habibullah, "The Political Economy of the Kashmir Conflict; Opportunities for Economic Peacebuilding and for U.S. policy," United States Institute of Peace, Special Report 121, June 2004, [online] http://www.usip.org/pubs/specialreports/sr121.html (retrieved August 18, 2004).

[508] Time magazine reported in February 2001: "Despite a decade of denials—Islamabad insists it only provides moral and political support, not training or tangible aid—Pakistan is fueling militant activity in Kashmir. Of the five main militant groups operating in Kashmir, four are based in Pakistan, where open recruiting and fundraising are commonplace. Training of militants is also done on Pakistani soil. The Pakistani military is deeply involved, especially in the smuggling of anti-Indian militants across the Line of Control. Ghulam Hasnain, "Inside Jihad," Time, February 5, 2001, Vol. 157 No. 5, [online] http://www.time.com/time/asia/magazine/2001/0205_kashmirsb1.html (retrieved July 20, 2005).

[509] "Jihad Recruitment on the Rise," The Friday Times, July 29, 2003, [online] http://www.pakistan-facts.com/article.php?story=20030729154610902 (retrieved May 31, 2004).

[510] The same group, with three others, issued warnings to passengers on the Srinagar-Muzzafarabad bus in April 2005.

[511] "Police Kill Varanasi Militant," BBC News, May 9, 2006, [online] http:///news.bbc.co.uk/2/hi/south_asia/4753143.stm (retrieved May 21, 2006).

Indian intelligence agencies now claim that most of the operations are carried out by the three or four primary groups operating in Jammu and Kashmir: Lashkar-e-Toiba, Jaish-e-Mohammad, Al Badr and Hizb-ul-Mujahedin.[512] Of the primarily Kashmiri armed groups, only the Hizb-ul-Mujahedin is still considered influential. Its leader, Syed Salauddin, has been resident in Pakistan since the late 1980s and, until the "war on terror," used to meet openly with journalists.

It is difficult to estimate the number of militants actually operating in Jammu and Kashmir. More than twenty thousand alleged militants have reportedly been killed since the conflict first began in 1988.[513] At least 4,500 alleged militants are presently in detention in Jammu and Kashmir, while over three thousand have surrendered. According to Jane's Defense Weekly:

> The number of militant Kashmiri and Pakistani fighters in Kashmir varies according to the intensity of operations and climate. Usually there are between 2,500 and 5,000 guerrillas, many of whom rotate between operational tours in Kashmir, Afghanistan, Central Asia, as well as training and periods of rest in Pakistan.[514]

While infiltration has decreased, the United Jihad Council still has machine guns, assault rifles, mortars, explosives, mines, rockets, and some sophisticated military equipment supplied by the Pakistani military, including night-vision equipment. Indian analysts say that the ISI spends up to U.S.$45 million every year to fund the militancy.[515] Pakistani media reports and Human Rights Watch research in Azad Kashmir shows that weapons and training continue to be provided to the militants by Pakistan.[516]

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The influx of militants from Pakistan has transformed a conflict over identity and independence into an even more dangerous fight driven by religion. Most Kashmiris resent religious extremism

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[512] Interviews with Indian officials, names withheld, New Delhi, November 2005. The Jaish-e-Mohammad, Lashkar-e-Toiba, Hizb-ul-Mujahedin, Harkat-ul-Mujahedin, Jammu & Kashmir Islamic Front, Al Badr, Jamiat-ul-Mujahedin and Dukhtaran-e-Millat have been banned by the Indian government as "terrorist organizations."

[513] South Asia Terrorism Portal, "Annual Fatalities in Terrorist Violence 1988-2006," [online] http://www.satp.org/satporg/countries/India/states/jandk/data_sheet/annual_casualties.htm (retrieved March 13, 2006).

[514] Jane's World Insurgency and Terrorism, United Jihad Council Groups, [online] http://www.janes.com/security/international_security/news/jwit/jwit010920_1_n.shtml (retrieved March 13, 2006).

[515] K. Santhanam et al, Jihadis in Jammu and Kashmir, Institute of Defence Studies and Analyses, (New Delhi: Sage Publications India Ltd, 2003), p. 35. According to the authors, ISI directly contributes about 25 percent of the estimated U.S.$45 million it spends annually to fund the militant groups. Another forty percent is channeled through contributions received from worldwide Islamic groups. The money is used for incentive payments, training, salaries, arms and ammunition. The funds are sent into India through religious trusts, welfare organizations and through the underground cash networks called hawala.

[516] Zulfiqar Ali, "Mansehra Militant Camp Humming Again," The Herald, July 10, 2005,[online] http://www.indianexpress.com/full_story.php?content_id=74232 (retrieved August 16, 2005).

that tends to focus more on Islamic religious rights instead of Kashmiri rights.[517] After a fatal attack by militants on his uncle, separatist leader Mirwaiz Umar Farooq complained about the religious extremists:

> From the day one, these forces have tried their best… to sabotage our sacred movement, and with the mask of Islam… have infiltrated into the rank and file of the movement for their trivial interests."[518]

Some Pakistani militants have admitted to journalists that occasionally "innocents" have died during the Kashmir *jihad*, but they explained that any Muslim should be honored to die for the cause.[519] Kashmiris increasingly seem to disagree. In a 2002 poll by MORI, 69 percent of respondents in Jammu and Kashmir said they opposed the foreign militant groups and 84 percent felt that Pakistan's involvement was based on religious affinity.[520]

There is resentment even in Pakistan-administered Kashmir. Sardar Abdul Qayoom, president of Pakistan-administered Kashmir and an influential pro-Pakistan voice, said recently that the extremists who believe that Kashmir's is a religious war have done great damage: "Jihad has become a business now. In fact, the worst damage to the Kashmir cause has been caused by jihadis."[521]

Human Rights Watch takes no position on state support, such as providing weapons and training, for armed opposition groups in other countries. However, whenever such support is provided, the state assumes certain responsibilities that can make it complicit in abuses committed. Governments that provide support should take all necessary measures to ensure that opposition forces abide by international humanitarian and human rights law, and sever all support to groups that persistently violate international legal standards.

While many Kashmiris say that without the armed groups there would not have been international pressure on India and Pakistan to resolve the problem, they also blame the militants for putting civilians at risk through bomb and grenade attacks in crowded places and by demanding food and shelter. Mirwaiz Umar Farooq, a leader of the All Party Hurriyat Conference, whose father and uncle were killed by militants, has consistently advocated a

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[517] Both pro-independence and pro-Pakistan Kashmiri leaders told Human Rights Watch that they do not believe in religious communalism, and in fact insist that they want displaced Kashmiri Hindus to return to their homes. They admit, however, that they cannot guarantee their safety from the militant Islamist groups based in Pakistan.

[518] "Mirwaiz Calls Attackers 'intruders in freedom struggle,'" *The Daily Excelsior*, June 4, 2004, [online] http://www.jammu-kashmir.com/archives/archives2004/kashmir 20040604d.html (retrieved September 3, 2005).

[519] Meenakshi Ganguly, "Three the Very Hard Way," Time, September 16, 2005, [online] http://www/time.com/time/asia/magazine/0,13675,501020923-351277,00.html (retrieved July 20, 2005).

[520] MORI, Detailed Poll Results, [online] http://www.mori.com/polls/2002/Kashmir.shtml (retrieved March 13, 2006).

[521] "Jihadis Have Done Worst Damage to Kashmir Cause: Sardar Qayoom," The Indian Express, May 15, 2005, [online] http://www.jammu-kashmir.com/archives/archives2005/kashmir20050515d.html (retrieved July 23, 2005).

peaceful settlement to the Kashmir issue that accommodates the aspirations of the Kashmiri people. "The gun has played a very important role in the movement," he says, "but militancy has to play a more supportive role rather than the dominant role."[522]

He, along with several other Kashmiri rebel leaders, traveled to Pakistan several times to talk to Pakistani political leaders and meet with the militant groups based in Pakistan.[523] After one such meeting, however, Syed Salauddin of Hizb-ul-Mujahedin, who also leads the United Jihad Council, stated: "The need for an organized and massive armed struggle has increased today more than ever and the Kashmiri youth need to prepare themselves for fighting in maximum numbers"[524]

A day after an attack in the center of Srinagar's business district on July 29, 2005, Indian paramilitary soldiers inspect a room where a suspected Pakistani Islamist militant was killed. © 2005 Robert Nickelsberg

According to Mirwaiz Umar Farooq, the movement in Jammu and Kashmir has become divided, with some insisting that a ceasefire and dialogue is the only option and others arguing for continuation of the armed struggle:

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[522] Human Rights Watch interview with Mirwaiz Umar Farooq, Srinagar, October 13, 2004.

[523] Zeeshan Haidar, "Kashmir Leaders go to Pakistan Looking for Peace," Reuters, June 3, 2005, [online] http://in.news.yahoo.com/050602/137/5ysvy.html (retrieved August 16, 2005).

[524] "Hizb Rejects Calls For Ceasefire With India," AFP, June 22, 2005, [online] http://www.dailytimes.com.pk/default.asp?page=story_22-6-2005_pg7_30 (retrieved August 16, 2005); "HM Not to Join Temporary Peace Process," The Pakistan Tribune, July 11, 2005, [online] http://www.jammu-kashmir.com/archives/archives2005/kashmir20050711c.html (retrieved August 16, 2005).

> There are some agencies who don't want a solution to the problem. These are hard-core organizations that see any movement forward on Kashmir as a compromise on their ideology. There is now a visible gap between those people who talk about a realistic approach and flexibility and others that believe flexibility is treason….We have to talk to these people. The gunmen have to be addressed….The Kashmiri leadership has to take responsibility because scores of people are getting killed.[525]

Separatist leaders in Jammu and Kashmir say that a settlement will be impossible unless it includes the Pakistan-based militant groups. Yasin Malik of the JKLF told Human Rights Watch that in a meeting with Prime Minister Manmohan Singh in February 2006 he proposed a dialogue with militant leaders, to be held in a third country.

> The Indian government is meeting Naga leaders [from north-east India] in a third country. Something similar could be arranged to talk to the militant leaders of Kashmir as well. But for this the Indian government has to be serious about working out a settlement. What is the use of talking peace if there is no serious effort by New Delhi to pursue a peace process with the Kashmiris.[526]

In the meantime, militant abuses continue, with no one in Pakistan or within the militant community holding perpetrators accountable.

A. Politically motivated killings, summary executions, and intimidation

Political killings in Jammu and Kashmir by militants are frequent. According to data compiled by the South Asia Terrorism Portal , since the conflict began in 1989 and up to 2005 an estimated 571 political activists had been killed in Jammu and Kashmir.[527] Militant groups have strongly opposed any election processes in Jammu and Kashmir, and many killings by militants take place in election periods. While the Indian government has always portrayed elections as evidence that Kashmiris support incorporation with India, militant groups as well as the All Party Hurriyat Conference and other rebel political leaders have always called for poll boycotts.

Militant groups have vigorously opposed political parties that contest elections in Jammu and Kashmir, calling them "Indian agents." They call for poll boycotts in every election, bomb polling stations, attack election agents and kill party activists. During the 2002 state assembly elections, at least forty-eight political workers and leaders were killed and at least fifty polling stations were

[525] Human Rights Watch interview with Mirwaiz Umar Farooq, Srinagar, October 14, 2004

[526] Human Rights Watch interview with Yasin Malik, Srinagar, March 4, 2006.

[527] South Asia Terrorism Portal, "Political Activists Killed by Terrorists in Jammu and Kashmir, 1989-2005," [online] http://www.satp.org/satporgtp/countries/india/states/jandk/data_sheets/political_assination.htm (retrieved April 13, 2006).

attacked.[528] Saiful Islam, a leader of the Hizb-ul-Mujahedin, issued a threat: "Those participating in the elections are traitors and action against them will be taken after the elections are over."[529]

During the May 2004 Indian parliamentary election campaign, several groups, many of them Pakistan-based ones like Jaish-e-Mohammad and Lashkar-e-Toiba, issued warnings, and cadres on the ground were instructed to intimidate political workers and target campaign rallies and meetings. An anonymous handwritten poster stuck on mosque walls, for instance, carried a warning from the Jaish-e-Mohammad, telling People's Democratic Party workers "not to participate in the elections, or else face consequences."[530] Once again, there were a number of attacks and killings. Mukhtar Ahmad Bhat of Janata Dal (U) was killed on March 18, 2004, and two days later Communist Party of India (Marxist) leader Mohammad Yusuf Tarigami came under attack, as did PDP leader Ghulam Hassan.[531] Several members of the National Conference have also been killed. In Malas village, Udhampur district, a village leader named Misruddin and another man, Haji Amkala, were punished for helping the government prepare for the elections: their ears were chopped off.[532]

Former PDP Chief Minister Mufti Mohammad Sayeed and his daughter, PDP President Mehbooba Mufti, have both escaped several assassination attempts. On January 24, 2004, a hand grenade was thrown at Mehbooba Mufti's convoy. On April 8, 2004, a grenade explosion during an election rally she was leading in Uri claimed eleven lives. The Save Kashmir Movement claimed responsibility for the attack.[533] Mehbooba Mufti told Human Rights Watch:

> So many of our workers have been killed. And not only that, children have died because of grenade attacks at our meetings. We have no control over these groups. We can only provide them with alternatives and tell them that there is progress… India and Pakistan are talking and dialogue has been offered to the militants as well. We have to convince these groups that the Kashmir issue is being sorted out and that they should not continue with the gun.[534]

In January-February 2005, elections were held for urban civic bodies in Jammu and Kashmir. Many Kashmiris participated because these elections gave them the opportunity to elect people

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[528] International Center For Peace Initiatives, "Cost of Conflict Between India and Pakistan," 2004, p. 69.

[529] "'We'll punish those who participated in elections': Hizb," Press Trust of India, October 5, 2002.

[530] Praveen Swami, "A Campaign of Guns," Frontline, Volume 21, April 24-May 7, 2004, [online] http://www.hinduonnet.com/fline/fl2109/stories/20040507003803600.htm (retrieved April 13, 2006).

[531] Praveen Swami, "Forces Brace For Elections, At Gunpoint," *The Hindu*, March 21, 2004, [online] http://www.hinduonnet.com/2004/03/21/stories/2004032100491300.htm (retrieved April 13, 2006).

[532] "Militants Chop Off Ears of Two on Election Duty," *The Indian Express*, April 21, 2004,[online] http://www.jammu-kashmir.com/archives/archives2004/kashmir20040421d.html (retrieved September 3, 2004).

[533] Praveen Swami, "A Campaign of Guns," Frontline, April 24-May 07, 2004.

[534] Human Rights Watch interview with Mehbooba Mufti, Srinagar, October 17, 2004.

who would deal with local issues. Militant groups once again called for a boycott. There were anonymous posters pasted on mosque walls and some candidates received anonymous threatening telephone calls. After the election, several elected council members have come under attack.[535] Several have resigned in fear, even asking pardon from militant groups in local newspapers.[536] For instance, Gulam Rasool Khan, a PDP councilor who was elected unopposed to the Beerwah municipal committee, said: "I will have no relation whatsoever with any political party."[537] Others are threatening to resign.[538] One council member told Human Rights Watch:

> I did not participate in these elections to show my support to India. I participated because my neighbors said I would be able to solve our problems of water supply and cleanliness. But these militants—who knows who they are?—are determined to punish us. There is not even a scope for discussion because the decision to kill us is made in Pakistan…. I try and take precautions when I go out of the house, but we are all very scared. In my neighborhood, I have many supporters who will protect me. But many others are in hiding. They are certain the militants will kill them.[539]

Militants have also summarily executed the children of persons targeted for attack. Two such cases—involving the eight-year-old daughter of a special police officer in Baramulla, and the fifteen-year-old daughter of an alleged police informer—have already been described above, and in the Chak Dara case, discussed below, alleged militants beheaded a twelve-year-old boy. Among those killed in the massacre of Hindus at Nadimarg were two children.

The following are some individual cases of politically motivated attacks, allegedly by militant groups. As with the cases of those killed by Indian government forces, this list is intended to be illustrative, not exhaustive.

Killing of Ghulam Ahmad Ganai, November 11, 2005

As Ghulam Ahmad Ganai walked to the mosque with his wife and daughters for Friday prayers, they saw six young men lurking outside. According to daughter Nahida Chaman, "They must have been in their early twenties. They were all in firans [long woolen shirts worn in Kashmir].

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[535] "Corporator Shot in J&K," *The Telegraph*, June 3, 2005, [online] http://www.telegraphindia.com/1050604/asp/nation/story_4825642.asp (retrieved August 12, 2005).

[536] M. Saleem Pandit, "J&K Councillors Run For Cover," *The Times of India*, February 16, 2005, [online] http://timesofindia.indiatimes.com/articleshow/1023110.cms (retrieved August 12, 2005).

[537] Ibid.

[538] "National Conference Threatens Resignations of Corporators," Indo-Asian News Service, February 11, 2005, [online] http://www.eians.com/stories/2005/02/11/11sri.shtml (retrieved August 12, 2005).

[539] Human Rights Watch interview with municipal council member, name withheld, July 30, 2005.

My father asked them who they were, and invited them to prayers at our mosque. But they refused and said they were waiting for someone."[540]

Finishing his prayers early, Ghulam Ahmad stepped out of the mosque. Two of the six men waiting outside opened fire. Ghulam Ahmad was shot in the legs, arms and chest and fell to the ground. Other people at the mosque rushed out. Some picked up the injured man, while others tried to chase his attackers. But all six escaped, shouting, "We killed him because he is like a dangerous bear."[541]

Ghulam Ahmad had previously been a militant, but surrendered and, in 1997, joined talks with the Indian government. He also became a member of the National Conference, later switching to the PDP and, in 2005, to the Congress party. According to Nahida Chaman,

> We think it was a political killing. The militants did not like that he was promoting peace in Kashmir. So they killed him.[542]

No militant group has claimed responsibility for the murder.[543]

Killing of Ghulam Rasool Andrabi, also known as "Gayoor," October 22, 2005

Shopkeepers in Pulwama had been wondering about the young stranger, about age eighteen, who was walking up and down in front of Ghulam Rasool Andrabi's house. When Ghulam Rasool, a poet who wrote under the penname "Gayoor," stepped out of his gate to buy some sugar, the shopkeepers saw the young man talk briefly into his cell phone. As Ghulam Rasool returned to his house, he walked past the man, who then opened fire, first hitting him on the leg. As Ghulam Rasool bent down to clutch his wound, another shot was fired into the back of his head, killing him instantly. His killer ran away.

Ghulam Rasool was a member of the National Conference and a well known politician in the area. The army and the police arrived immediately on the scene. Eyewitnesses in the bazaar said that the shooting had happened so quickly that that they could not identify the killer. A police complaint was lodged. The investigation has made little progress, said his son Syed Wajahat Rasool Andrabi:

> We know that the killer was a militant. Two militants had come to our house a month before my father's death. They did not say anything to us. But now we

[540] Human Rights Watch interview with Nahida Chaman, victim's daughter, Lajoora, Pulwama, March 1, 2006.

[541] Human Rights Watch interview with Zaiba Chaman, victim's wife, Lajoora, Pulwama, March 1, 2006.

[542] Human Rights interview with Nahida Chaman, victim's daughter, March 1, 2006.

[543] "Cong Activist Gunned Down," *The Daily Excelsior*, November 11, 2005, [online] http://www.jammu-kashmir.com/archives/archives2005/kashmir20051111c.html (retrieved April 13, 2006).

> think they had come to check out the area. One-and-a-half months after my father was killed, both my brother and I received an anonymous call on our cell phone. A man told us that we must leave Pulwama within twenty-four hours, or we would meet the same fate as our father. I told the caller that I thought it was a crank call. So he offered to meet me. I refused. Then he said that I should check the number that had flashed on my phone when he called. "Everyone knows that number," he said. I said I had no one to ask about all this and that we had nowhere to go, so we would not leave our home. Then I heard shots being fired near the phone. The man said, now that I had heard the firing, I should take the warning seriously and leave.[544]

The caller said to Wajahat Rasool that he belonged to the Hizb-ul-Mujahedin. Wajahat Rasool and his brother complained to the police about the threats, but they were told not to worry. No additional security was provided. After the initial telephone call to the two sons, there were several other threatening calls. In some of them, the anonymous callers asked the family to go to the mosque and publicly beg forgiveness. Syed Wajahat Rasool said their life is constantly at risk.

> I said [to the callers], 'what should we apologize for? Tell us our mistake? You did not warn my father, you just killed him.' I refused to leave. But my mother is so scared, she does not let us go out of the house. She has insisted that we disconnect our phones because she does not want any more threats."[545]

Wajahat Rasool also went to the mobile phone company to check on the number from which the threats were made. The number is listed under a resident of Shopian in Pulwama. The name and address was also provided to the police, but according to Wajahat Rasool, there has been no further investigation.

Killing of three men and a boy in Chak Dara, July 17, 2005

Ghulam Qadar Uswal, a forty-five-year-old hotelier, was a member of the National Conference. On July 17, 2005, a man came to call him from his hotel. According to his nephew:

> My uncle was called away in the evening. He did not return all night. We went looking for him in the morning and eventually someone found him in an orchard near the forest. His throat had been slit. While we were there, one of the villagers found another body a little further away. And then we found two others. All of their throats were slit.[546]

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[544] Human Rights Watch interview with Syed Wajahat Rasool Andrabi, Ratnipora, Pulwama, March 1, 2006.
[545] Ibid.
[546] Human Rights Watch interview with Mohammad Rafiq, Chak Dara, July 31, 2005.

The three other dead were local villagers who had gone out to the forest to gather herbs. Two were brothers, Mukhtar Ahmad, age twelve, and Mohammad Ahwan, age thirty while the third was their brother-in-law Mohammad Aslam. All four were Gujjars, tribal people who live high in the mountains. Their families had repeatedly come under attack from militants because they are suspected to be government informers.

The Gujjar and Bakarwal communities often live in the upper mountains in the summer and come down to lower areas in winter, when snow makes the heights uninhabitable. As they are familiar with the mountain paths and passes, they often spot militants as they cross the border into Jammu and Kashmir. These communities are ethnically different from Kashmiris. It is believed that they often inform the security forces of militant movements, particularly when they are hiding in the forested mountains. As a result they have been coming under increasing attacks by militants. Four Gujjars were killed in the Dachigam area near Srinagar in July 2005. Four others were killed in the same area in June 2005. On June 27, 2004, twelve Gujjars were killed for allegedly helping the army to block a strategic route in the Poonch sector.[547]

The Gujjars and Bakarwals have been feeling increasingly threatened. Said one Gujjar man in Chak Dara:

> We have a terrible time. We cannot step out after dark. The militants are always roaming about and they attack us if we see them.[548]

Killing of Mohammad Ramzan Mian, May 3, 2005

A member of the Congress party, fifty-two-year-old Mohammad Ramzan Mian, was very active during the 2002 state assembly elections in Jammu and Kashmir. According to his sister Wazira:

> We used to receive threatening calls from militants all the time. But he refused to stop. There was a bomb blast right outside our house, but he still did not stop.[549]

In February 2005, Mohammad Ramzan decided to contest the municipal elections. He won. Because of the threats from militants, three armed policemen were assigned to provide security for him. On May 3, 2005, when he was walking through the market barely a few hundred meters from his house, gunmen opened fire. He and his personal security officer died on the spot, while

[547] Luv Puri, "They Came To Wipe Out Two Clans of Gujjars," *The Hindu*, June 27, 2004, [online] http://www.jammu-kashmir.com/archives/archives2004/kashmir20040627d.html (retrieved September 3, 2004).

[548] Human Rights Watch interview, name withheld, July 31, 2005.

[549] Human Rights Watch interview with Wazira, victim's sister, Pattan, August 4, 2005.

two security guards died later in hospital from gunshot wounds.[550] No group has claimed responsibility for the killings.

Killing of Peer Mohammad Maqbool Shah, February 9, 2005

Peer Mohammad Maqbool Shah was a member of the National Conference. The seventy-year-old was very active in his neighborhood. When the 2005 municipal elections were announced in Srinagar he became the party candidate and was elected. Said his daughter-in-law:

> We were against the decision. We thought there was too much risk. One of my brothers-in-law had already been killed by militants [Mohammad Maqbool's son Peer Abdul Majid Shah, also a National Conference member, had been shot dead in 1995]. We feared that the militants would strike at us again. But my father-in-law was a very brave man. He said that the militants were also his sons. They had just lost their way. They would not hurt him.[551]

On February 9, 2005, Mohammad Maqbool went for evening prayers to the neighborhood mosque. He was killed by a single shot as he walked back home. No one saw the killer and no group has admitted to the killing. However, his family says that they know he was killed by militants. Said his daughter-in-law: "The militants had already warned people against contesting. But he [Mohammad Maqbool] would not listen. So they killed him."[552]

Killing of Farooq Ahmad Zargar, December 29, 2004

Farooq Ahmad Zargar had been a member of the National Conference since he was a student. In 2002, when he was actively campaigning for the party during the state elections, he came under attack. An unknown gunman opened fire, wounding him in the leg. Although he knew he was being targeted by militants, according to his brother Javed Ahmad Zargar, he insisted on continuing to work for the party. He was planning to contest the municipal elections in 2005.

On December 29, 2004, Farooq Ahmad went to attend the funeral service of a relative. His brother was with him. It was about 7:30 in the evening. His brother recounted:

> Outside the graveyard, there are two streets. There were two men waiting, one on each street. They were wearing firans (long woolen shirts usually worn in

[550] Mukhtar Ahmad, "Militants Kill Yet Another Civic Chief in Kashmir," Rediff.com, May 3, 2005, [online] http://www.rediff.com//news/2005/may/03kash.htm (retrieved August 12, 2005).
[551] Human Rights Watch interview with Mrs. Farooq, daughter-in-law of Pir Mohammad Maqbool Shah, Srinagar, July 31, 2005.
[552] Ibid.

> Kashmir). They were holding guns that had been hidden inside their sleeves. They both opened fire. My brother fell down and they both ran away.[553]

Farooq Ahmad was rushed to hospital, but did not survive his injuries. No group has claimed responsibility for the killing.

Attacks on the National Conference's Dr. Farooq Abdullah and Omar Abdullah, and killing of Safdar Ali Baig

The National Conference, the main opposition party after its defeat in the 2002 Jammu and Kashmir state elections, has long been a target of militants because of its participation in electoral politics and its enormous clout in the state. Historically, it has remained the state's largest political party and its founder, Sheikh Abdullah, is still highly respected. While the National Conference has always campaigned for greater autonomy for Jammu and Kashmir, it does not support either independence or accession to Pakistan. Although discredited because of rigged elections and widespread corruption during the rule of Sheikh Abdullah's son, Dr. Farooq Abdullah, who remains the leader of the National Conference, the party is still regarded as one of the greatest challenges to the separatist ideology of the militants. It has now effectively led by Farooq Abdullah's son, Omar Abdullah.

Several hundred National Conference workers and leaders have been killed since 1989, with Safdar Ali Baig one of the most prominent victims. A former minister and senior leader of the party, Safdar Ali Baig was shot by masked gunmen as he came out of a mosque after prayers on October 21, 2004. He was killed in Anantnag town.[554] The police said they suspected separatist militants of the killing. The National Conference responded by demanding more security for party leaders and activists.[555] Yet on October 24, 2004, when Omar Abdullah, and several others were on their way to attend the funeral ceremonies of Safdar Ali Baig, an improvised explosive device was triggered just as they reached Sarnal graveyard in Anantnag district, where the prayers were being held. Omar Abdullah's car was barely ten feet away. Although he escaped unhurt, seven people were injured in the blast, one of them fatally. The attack followed an attack on October 9, 2004, when militants had opened fire on Omar Abdullah's convoy as he traveled from Srinagar to Jammu.

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[553] Human Rights Watch interview with Javed Ahmad Zargar, victim's brother, Srinagar, July 30, 2005.

[554] "Masked Guerillas Kill Former Kashmir Minister," Reuters, October 21, 2004, [online] http://www.jammu-kashmir.com/archives/archives2004/kashmir20041021a.html (retrieved August 16, 2005).

[555] "NC Shell Shocked Over Baig Killing, Seeks More Security," *The Times of India*, October 23, 2004, [online] http://www.jammu-kashmir.com/archives/archives2004/kashmir20041023b.html (retrieved April 13, 2006).

Killing of eleven PDP supporters

On April 8, 2004, eleven people were killed and nearly seventy injured in a grenade attack during an election rally in Uri. Sardar Kabir Ahmad Khan, a local PDP supporter present at the rally, said that the blast was enormous:

> Mehbooba Mufti was about to address the rally. The militants must have been waiting for her. Suddenly there were several explosions. Many people were injured. So many died. My son was hurt in the leg so badly, he had to be in hospital. But the doctors could not take out all the shrapnel.[556]

The PDP president, Mehbooba Mufti, who may have been the target, escaped unhurt, but several party officials were killed. The state's finance minister, Muzaffar Hussain Baig, and tourism minister, Ghulam Hassan Mir, were among the injured. Responsibility for the attack was later claimed by the Save Kashmir Movement. Earlier, the same group had claimed responsibility for the killing of Abdul Aziz Mir, a PDP legislator, and the deaths of party supporters Ghulam Mohammad Dar and Ali Mohammad Bhat.[557]

[556] Human Rights Watch interview with Sardar Kabir Ahmad Khan, Galibagh village, Baramulla, February 28, 2006. His son Zulfiqar Khan was later killed in a faked armed encounter. Please see Section V, p. 83.

[557] "Terrorists Gun Down PDP MLA Abdul Aziz Mir," Press Trust of India, December 20, 2002, [online] http://www.jammu-kashmir.com/archives/archives2002/kashmir20021220c.html (retrieved April 13, 2006).

Noora Sofi holds photographs of her husband Abdul Rahim Sofi and son, Gawar Ali Sofi. Both were shot dead by militants inside their home. Abdul Rahim, a police constable, had earlier refused to shelter a Pakistani militant.
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Attacks on Mangat Ram Sharma

The Congress party deputy chief minister of Jammu and Kashmir, Mangat Ram Sharma, has escaped several attacks on his life. In one, on July 13, 2004, alleged militants threw a grenade at his car in Srinagar, injuring several persons. On July 20, 2004, Mangat Ram Sharma, power minister Mohammed Sharief Niaz, and other government functionaries were visiting a medical camp in Kapran. It was a crowded event with cultural performances and a check distribution ceremony. Just as the minister finished delivering his speech, a grenade hit the right side of the podium and exploded, killing four persons and injuring twenty-two. Mangat Ram Sharma and other Congress leaders and district administration officials were wounded. No one claimed responsibility for the attacks, but the police suspect militant groups, pointing out that Duru, the area where the attack occurred, has long been a militant stronghold.[558]

[558] "Kashmir Rebel Leader Escapes Second Rebel Attack In A Week," Reuters, July 19, 2004, [online] http://www.jammu-kashmir.com/archives/archives2004/kashmir20040719d.html (retrieved April 13, 2006).

Killing of Abdul Rahim Sofi and Gawar Ali Sofi, October 14, 2004

Eighteen-year-old Gawar Ali Sofi had gone out and bought a VCD home to watch. The family locked their front gate and sat down to watch the movie. Suddenly they heard voices outside. According to his mother Noora:

> We had a guest and we heard him greet someone. Then we heard a stranger respond. We were surprised because the gates were locked. How could someone come inside? Then the door opened and a man came inside. He was carrying a gun. My husband asked who he was. But the man opened fire. He killed my husband and my son. I was injured. The man ran away.[559]

The neighbors later said that the assailant had jumped over the wall. Another man had waited outside. The family suspects that the killers were militants. Noora continued:

> A few weeks earlier, two men had come to the house. One was Pakistani and the other said he was from Pakistani Kashmir. They wanted us to give them a room to stay in. My husband was a police officer. He refused to let them stay. I think those men were angry and they came back to kill him.[560]

No group has claimed responsibility for the killings. The family has received compensation from the government. [561]

Attack on Mohammad Yakub Chaat, September 30, 2004

During the 2002 state elections, eighteen-year-old Mohammad Yakub Chaat's family had campaigned openly for the local PDP candidate, Zahoor Mir, who was related to the family. On September 30, 2004, unidentified gunmen entered Mohammad Yakub's home in Namblabal, Pampore, and opened fire. Mohammad Yakub had just returned from working on his farm and was in the family sitting room with his parents and eight-year-old nephew. The gunmen opened fire from behind a curtain. Chaat, who was shot in his arm, leg and shoulder, survived. Mohammad Yakub's relatives believe that the attack was in retaliation for the family's participation in the election. Said his father, Ghulam Hasan Chaat, "We are not interested in

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[559] Human Rights Watch interview with Noora, wife of Abdul Rahim Sofi, Theer, July 31, 2005.

[560] Human Rights Watch interview with Noora, Theer, July 31, 2005.

[561] A simple way to determine that the state concluded that a person killed was not an alleged militant is whether the government offered compensation to the family of the deceased. The government makes a distinction between pro-state and anti-state casualties. Victims injured or killed in cross-fire or in militant attacks are given monetary compensations, which is usually Rs. 100,000 rupees (U.S. $2,300) for deaths, Rs 75,000 (U.S. $1700) for permanent disability, Rs 5,000 (U.S. $116) for grievous injury and Rs 1,000 (U.S. $ 20) for minor injuries. Compensation up to Rs. 200,000 (U.S. $4,500) is paid in compensation for property damaged in militancy. Annual Report of the Ministry of Home Affairs, Government of India, 2003-2004, p. 27.

politics. But since a relative was the candidate, it was our obligation to help him. I suppose the militants decided to punish us."[562]

The family had lost an older son, Farooq Ahmad Chaat, in 1996, when he was abducted and killed by unidentified gunmen. The family is now extremely frightened. They keep their doors locked at all times. The little boy who witnessed the shooting even stopped speaking for awhile from the shock.

Killing of Habibullah Sheikh, June 18, 2004

Fifty-eight-year-old Habibullah Sheikh was a long-time supporter of the National Conference party. On June 18, 2004, he went to the market in Beerwah, Budgam, to purchase the morning paper. At around 10 a.m., as he returned, two unidentified gunmen were waiting for him just outside his home. They opened fire at close range, killing him instantly. According to his son, Javed Ahmad Sheikh, his father had held a party meeting in his house just three days before his death. Javed Sheikh says that this might have provoked the militants.

> My father has openly supported the National Conference all these years. Why did they choose to kill him now? Who knows what these people want…But I have no doubt that he was killed by militants.[563]

The family has received compensation from the government. No group admitted responsibility for the killing.[564]

Killing of Maulvi Mushtaq Ahmed and other attacks on his family

Maulvi Mushtaq Ahmed, a retired civil servant, was killed while offering midday prayers at a mosque at Rajwari Kadal in Srinagar. Maulvi Mushtaq was not active politically, although he was part of the Hurriyat Conference led by his nephew Mirwaiz Umar Farooq, which had been advocating dialogue with the Indian government. When Maulvi Mushtaq went to pray at the mosque, his assassins were already inside waiting for him. As he knelt and bent down, he was shot from behind. He was rushed to hospital, where he died from his wounds on June 7, 2004. Wrote Amy Waldman of the *New York Times*:

> Even by the violent standards of the conflict here… the killing of an unarmed 61-year-old man at prayer seemed to set a new standard of venality…. No one, as far as anyone knows, had ever been killed while offering prayers to God.[565]

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[562] Human Rights Watch interview with Ghulam Hasan Chaat, Pampore, October 14, 2004.
[563] Human Rights Watch interview, Javed Ahmad Sheikh, victim's son, Beerwah, October 15, 2004.
[564] Ibid.

On May 29, 2004, even as the family was at the hospital waiting for news, there was a grenade attack on Mirwaiz Umar Farooq's house. The rifle grenade, fired from a distance, exploded in an alley outside the house. Although no one was hurt, there was some damage to the property.

The Save Kashmir Movement claimed responsibility for the attack. Its spokesperson, Sheikh Tajamul, told a local news agency by telephone:

> This should serve as the writing on the wall for those who have entered into dialogue…that no individual or party, howsoever important they might be, can be above the mujahedin and the jihad.[566]

Mirwaiz Umar Farooq told Human Rights Watch:

> These attacks were definitely in the context of the dialogue process. This appears to be a message from the hardliners. These people are targeting political leaders. These are groups that do not owe their allegiance to anybody. That is something that we feel is very difficult to handle. But they are being funded and so someone is certainly responsible for these actions.[567]

Killing of Mohammad Sultan Sheikh, December 9, 2003

In April 2003, an armed gunman had hidden in the home of Mohammad Sultan Sheikh, a poor carpet weaver, in Chewpora village, Beerwah, Budgam. The militant was being chased by soldiers when he ran into the hut. The troops then surrounded it. According to Mohammad Sultan's wife Ayesha Sheikh, there was an exchange of fire and the militant managed to escape.[568]

On December 9, 2003, unidentified gunmen claiming to be with the Hizb-ul-Mujahedin came to the home of Mohmmad Sultan Sheikh. They called him outside, accused him of being an informer, and summarily executed him. Ayesha Sheikh says the accusations were not true:

> My husband did not know anything about militants. After the militant escaped, the security forces used to come regularly and take him away for interrogation.

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[565] Amy Waldman, "Violence in Kashmir Invades a Most Sacred Space," *The New York Times*, June 16, 2004, [online] http://www.genocidewatch.org/IndiaKashmir16June2004.htm (retrieved April 20, 2005).

[566] "Militants Attack Mirwaiz's House, Shoot and Hurt His Uncle in Mosque," *The Asian Age*, May 29, 2004, [online] http://www.jammu-kashmir.com/archives/archives2004/kashmir20040529c.html (retrieved September 3, 2004).

[567] Human Rights Watch interview with Mirwaiz Umar Farooq, Srinagar, October 13, 2004.

[568] Human Rights Watch interview with Ayesha Sheikh, victim's wife, Chewpora, Budgam, October 15, 2004.

> He was tortured a lot. Then the militants killed him. We have no one to protect us. I have four small children and they have been orphaned by these people.[569]

Killing of Bashir Ahmed Tantray, February 15, 2003

Bashir Ahmed Tantray was a carpet weaver and lived with his family in Pattan. He often went to the local army camp and had some friends there. On February 15, 2003, the twenty-year-old had gone to the mosque for afternoon prayers. According to his uncle, Ghulam Mohammad Tantray, he had previously been threatened by militants who thought he was an informer:

> He was killed about 4:30 in the afternoon. There were other people near the mosque. But no one recognized the killer. He just walked up and opened fire. There were four or five bullets. Everyone ran away.[570]

The family was paid compensation by the government.

B. Direct and indiscriminate attacks on civilians

As militant groups have lost ground to the security forces, they have increasingly made use of bombs, grenades, improvised explosive devices (IEDs), landmines, and other explosive devices.[571] While many were directed against the security forces, others were used directly against civilians, or indiscriminately, with predictable civilian casualties. International humanitarian law prohibits direct attacks on civilians. [572] Additionally, methods of attack that are not directed or cannot be directed at a specific military target, and consequently, are of a nature to strike military targets and civilians without distinction, are prohibited.[573]

According to data compiled from press accounts by the South Asia Terrorism Portal, there were nearly 200 such attacks in 2005 that claimed at least 120 lives.[574] In 2004, there were over 200 bombings, killing nearly 150 people.[575] Kashmiri groups have also been blamed for blasts outside

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[569] Human Rights Watch interview with Ayesha Begum, Budgam, October 15, 2004.

[570] Human Rights Watch interview with Ghulam Mohammad Tantray, uncle of victim, Baramulla, August 4, 2005.

[571] Ministry of Home Affairs, Government of India, "Recovery of explosive materials from terrorists/militants in J & K," Annual Report 2003-2004, Annexure IV, p. 144.

[572] ICRC, Customary International Humanitarian Law, rule 1, citing Protocol II, Art. 13(2).

[573] ICRC, Customary International Humanitarian Law, rules 11 & 12, citing Protocol II, Art. 13(2) and other sources.

[574] South Asia Terrorism Portal, "Explosions in Jammu and Kashmir, 2005," [online] http://www.satp.org/satporgtp/countries/India/states/jandk/data_sheet/explosions2005.htm (retrieved March 13, 2006).

[575] South Asia Terrorism, "Explosions in Jammu and Kashmir, 2004," [online] http://www.satp.org/satporgtp/countries/india/states/jandk/data_sheets/explosions2004.htm (retrieved March 13, 2006). According to the Indian army, as of March 2006, 6,214 antipersonnel and antitank mines, 36,900 kilograms of explosives, and 62,945 grenades had been recovered during operations. See "Captured Weapons as of August 16, 2005," Indian Army, [online] http://www.armyinkashmir.org/v2/statistical_facts/cw_actual_data_assault_riflies.shtml (retrieved March 13, 2006).

Jammu and Kashmir, such as the October 2005 attacks in New Delhi and the March 2006 attack in Varanasi.[576]

According to a 2005 report by the Landmine Monitor, established by the International Campaign to Ban Landmines:

> There were numerous reports of new antipersonnel mine casualties in this region in this reporting period, but it was usually not possible to determine which group laid the mines. A review of media reports in 2004 and 2005 by Landmine Monitor found reports every month of military and civilian casualties from landmine and IED explosions in Jammu and Kashmir. In almost every case, Islamic militants were blamed for the incidents.[577]

Car bomb at Central Secondary School, killing fourteen, Pulwama, June 13, 2005

On June 13, 2005, students had just come in from the morning assembly. Manzoor Ahmed was teaching his class when an apparently parked car packed with explosives was detonated outside the school. Says Manzoor Ahmed:

> I heard a loud noise. Then I felt a sharp pain and looked down. There was blood on my shirt. I realized I had been hurt. The windows were all broken. My students had fallen down. I was badly injured. There was a hole through my stomach. I spent weeks in hospital and have only just [six weeks later] returned to work.[578]

Fourteen people were killed, including three children and three soldiers. Over 100 people were injured.[579] According to school authorities, the damage could have been worse:

> Just half an hour earlier, the students were on drill outside. If they had still been there, they would all have been hurt. One student, who was there drinking water, was killed…. The students at the school are still very disturbed. Recently there was an explosion at an electric pole and three children fainted with fear.[580]

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[576] "Police Kill 'Varanasi Militant,'" BBC News, May 9, 2006, [online] https://news.bbc.co.uk/1/hi/world/south_asia/4753143.stm (retrieved May 16, 2006); "New Delhi Bomb Mastermind Arrested," CNN, November 13, 2005, [online] http://www.cnn.com/2005/WORLD/asiapcf/11/13/india.bombs/index.html (retrieved May 16, 2006).

[577] Landmine Monitor 2005, [online] http://www.icbl.org/lm/2005/India.html#fn17 (retrieved March 13, 2006).

[578] Human Rights Watch interview with Manzoor Ahmed, Pulwama, July 30, 2005.

[579] "Deadly Blast Near Kashmir School," BBC News, June 13, 2005, [online] http://news.bbc.co.uk/1/hi/world/south_asia/4086848.stm (retrieved August 16, 2005).

[580] Human Rights Watch interview with Abdul Salam Thour, Pulwama, July 30, 2005.

It is unclear whether the school was the intended target, and no militant group admitted responsibility for the attack, which was condemned by all political parties and non-violent separatist groups.[581]

Landmine blast killing Aasia Jeelani and Ghulam Nabi Sheikh, April 20, 2004

Aasia Jeelani, along with other members of the Jammu and Kashmir Coalition of Civil Society, were monitoring the parliamentary elections in April 2004. On April 20, the seven member team was on its way to monitor the Baramulla and Kupwara districts. At Sogam, in Kupwara district, their vehicle was blown up in a blast by an IED. Two persons including Aasia Jeelani and the driver, Ghulam Nabi Sheikh, were killed and four others injured.[582] Lashkar-e-Toiba militants reportedly claimed responsibility for the attack.[583]

Grenade attack killing Samrina Iqbal Bandey, February 27, 2004

A student at the local high school, fifteen-year-old Samrina Iqbal Bandey attended a rally held by Chief Minister Mufti Mohammad Sayeed in Syedpora, Beerwah, Budgam, on February 27, 2004. Alleged militants fired two rifle grenades into the crowd and she was killed on the spot.[584] The family received cash compensation from the government and the local college has been named after her.

Death of Mohammad Ayub Khoro, Abdul Shamsher and eight others, September 6, 2003

On the morning of September 6, 2003, Mohammad Ayub, a twenty-nine-year-old blacksmith, and Abdul Shamsher, a traveling salesman, were waiting at a crowded bus stop near their homes. Most of the people at the bus stand were residents of a displaced persons colony in Pareempura, where they had moved because of violence in the countryside. Without warning, at about 9:45 a.m., alleged militants triggered a landmine by the bus stop. Eight people were killed, including Mohammad Ayub and Abdul Shamsher, and several others were injured. Hasina Ayub, Mohammad Ayub's twenty-four-year-old widow, said she is destitute: "They have destroyed our lives. I have two small children. Don't these people care about women and children?[585]

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[581] In September 2005, the police claimed that Adil Pathan, a Pakistani national belonging to the Hizb-ul-Mujahedin whom they alleged was the mastermind of the Pulwama attack, was killed in an armed encounter in Pulwama. See "SPO, 2 Hizb Militants Shot," *The Tribune* (Chandigarh), September 4, 2005, [online] http://www.tribuneindia.com/2005/20050904/j&k.htm#1 (retrieved April 13, 2006).

[582] See also Informative Missive, April 2004. Aasia Jeelani worked closely with the Public Commission on Human Rights and the Association of Parents of Disappeared Persons. She also started Voices Unheard, a quarterly report on the effect of the conflict on women in Jammu and Kashmir state.

[583] See Landmine Monitor 2005, [online] http://www.icbl.org/lm/2005/India.html#fn17 (retrieved March 13, 2006).

[584] "Mufti Sayeed Escapes Grenade Attack," *The Tribune* (Chandigarh), February 27, 2004, [online] http://www.tribuneindia.com/2004/20040228/main1.htm (retrieved April 13, 2006).

[585] Human Rights Watch interview with Hasina Ayub, Budam, October 13, 2004. According to the International Center for Peace Initiatives, at least 14,000 women have been widowed and 17,500 children orphaned in Kashmir due to the violence. International Center for Peace Initiatives, "Cost of Conflict Between India and Pakistan," 2004, p. 62.

C. Militant attacks on schools and recruitment of children

Militants in Kashmir have long been responsible for attacks on schools and for recruiting children into their forces. International humanitarian law prohibits attacks directed at civilians and civilian objects. Schools are protected as civilian objects, while teachers and students fall under the protection granted to civilians unless they are taking a direct part in hostilities.[586] International law also prohibits the recruitment and use of children as soldiers and in other combat-related roles.[587] The prohibition on the recruitment and use of children below the age of fifteen is now considered customary international law, and is binding on all parties to armed conflict.[588] This standard is also reflected in the Convention on the Rights of the Child, which India ratified in December 1992.[589] The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, which India ratified in November 2005, prohibits state armed forces and rebel groups from recruiting or using in hostilities persons under the age of eighteen years.[590]

Laborers work on the reconstruction of the renowned Islamia High School in downtown Srinagar, August 2, 2005. The school suffered an arson attack in early 2005 by Pakistani-supported Islamist militants as a warning to the Kashmiri owner and religious leader of the school not to negotiate with the Indian Government over Kashmir's independence.
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[586] Protocol II, Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts, 8 June 1977, Art. 13(3).

[587] Protocol II to the Geneva Conventions of 1949, which applies during non-international armed conflicts, prohibits states and non-state armed groups from recruiting or using children under the age of fifteen in armed conflict.

[588] ICRC, Customary International Humanitarian Law, rule 136, and discussion at pp. 484-85.

[589] Convention on the Rights of the Child, General Assembly Resolution 44/25, November 20, 1989, [online] http://www.unhchr.ch/html/menu2/6/crc/treaties/crc.htm (retrieved April 20, 2006).

[590] CRC Optional Protocol on children and armed conflict, A/RES/54/262, entered into force February 12, 2002, [online] http://www.unhchr.ch/html/menu2/6/protocolchild.htm (retrieved April 12, 2006). India ratified the Protocol on November 30, 2005.

According to the International Center for Peace Initiatives, militants have carried out attacks damaging at least 650 schools since the conflict began.[591] Causing particular outrage was an attack on July 5, 2004, when militants burned down the 105-year-old Islamia Higher Secondary School run by a religious and education trust led by Mirwaiz Umar Farooq.[592]

In some of these attacks on schools, children have been killed or injured.[593] On August 15, 2004, two students were injured when a grenade fired by alleged militants exploded during Independence Day celebrations at a school in Baramulla.[594] In March 2005, an eight-year-old was killed and six other students injured in a blast inside the compound of the Nadihal high school.[595] (For the death of a student in a car bomb blast that struck a school in Pulwama, an incident in which it is unclear whether the school was specifically targeted, see above.)

Teachers say that students have become traumatized. One teacher described the situation after there was an explosion outside the Kamala Nehru School in Srinagar when the students had gathered in the courtyard for morning-prayer:

> The children of Kashmir live in a constant state of terror. As soon as there was a blast, the children began to run. It was a stampede. They pushed at the teachers and at each other. Several children fell down. Some managed to stumble outside the gate, and many fell as they ran. They were picked up by the shopkeepers. That is the situation in Kashmir today. Everyone lives in fear. We don't know who is responsible for the blast.[596]

Militant groups have drafted children in Jammu and Kashmir, Azad Kashmir, and Pakistan. Recruits may be volunteers or abductees. The militants have engaged in active recruitment of children into their forces.[597] Although Human Rights Watch did not interview any child soldiers, some former militants said that they had joined the armed groups when they were children. For instance, one former militant described how he and several of his friends had joined the Hizb-ul-Mujahedin in 1996. He was sixteen at that time:

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[591] International Center for Peace Initiatives, "Cost of Conflict Between India and Pakistan," p. 68.

[592] "105-Year-Old Kashmir School Burns Down," The Associated Press, July 5, 2004, [online] http://www.jammu-kashmir.com/archives/archives2004/kashmir20040705d.html (retrieved April 13, 2006).

[593] Human Rights Watch considers a child to be any human being below the age of eighteen years.

[594] "14 Hurt As Militants Target School On I-day In Kashmir," *The Deccan Herald*, August 16, 2004, [online] http://www.deccanherald.com/deccanherald/aug162004/i8.asp (retrieved April 13, 2006).

[595] "8-Year-Old Killed In School Blast," *The Times of India*, March 18, 2005, [online] http://timesofindia.indiatimes.com/articleshow/1056209.cms (retrieved April 13, 2006).

[596] Human Rights Watch interview, name withheld, Srinagar, July 29, 2005.

[597] "Ultras Using Children, Mentally Challenged People: Army," Press Trust of India, August 12, 2005, [online] http://www.kashmirlive.com/full_story.php?content_id=52581&type=ei (retrieved August 16, 2005).

> I was still in school. Many boys from our village, who had crossed to Pakistan in 1989 or soon after, were senior commanders. They used to come back for visits with their guns and tell us that it was our duty to join the fight…. It was not the gun that tempted me, but the shoes that they used to wear. They had those nice jogging shoes. They told me I would get a pair too, if I joined. So I did.[598]

Parents in some villages visited by Human Rights Watch complained that they are always fearful that their children will be indoctrinated and then recruited from schools or mosques, or by militants operating in the area.[599]

According to the South Asia Terrorism Portal, nearly three thousand boys have been abducted by alleged militants since the conflict began.[600] For example, in Chootwaliwar, Gandherbal, villagers told Human Rights Watch that at least three people had been abducted by militants in 2003, one of them a schoolboy; none of them have returned.[601]

Children are put to work in various roles by militant groups after receiving rudimentary arms training.[602] With children being used as messengers or to ferry weapons, security forces have started checking them as well,[603] and several have reportedly been arrested while crossing the border.[604] Members of the Jammu and Kashmir High Court Bar Association say there are several child soldiers in custody in various jails.[605]

This fact that children serve with the militants places many other children at the risk of aggressive questioning by troops at check posts. The use of children by militants may have led to abuses by security forces, such as the killing of four boys playing cricket in Handwara in 2006 (see above). Troops say that they opened fire because they believed a militant was hiding among the boys.[606]

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[598] Human Rights Watch interview, details withheld.

[599] During interviews with Human Rights Watch, parents repeatedly said that they feared that their teenage sons would run away to join the militants. With education systems troubled because of the violence, this is particularly true of students who fail examinations and decide to take up militancy as a career option. Parents also complained of indoctrination in mosques and by older militants.

[600] South Asia Terrorism Portal, "Abductions by Terrorists in Jammu and Kashmir," [online] http://www.satp.org/satporgtp/countries/india/states/jandk/data_sheets/yearwise_data_of_abductions.htm (retrieved April12, 2006).

[601] Human Rights Watch interview, names withheld, Gandherbal, October 12, 2004.

[602] See Praveen Swami, "Jehad's Child Warriors," Frontline, September 27-October 10, 2003, [online] http://www.flonnet.com/fl2020/stories/20031010004203200.htm (retrieved March 2, 2004).

[603] Prakriiti Gupta, "Child Warriors of Kashmir," Women's Feature Service, November 20, 2005, [online] http://www.boloji.com/wfs4/wfs495.htm (retrieved April 13, 2006).

[604] "Army Grappling With Child Warriors in J&K," Indo-Asian News Service, August 1, 2004, [online] http://www.jammu-kashmir.com/archives/archives2004/kashmir20040801d.html (retrieved September 3, 2004).

[605] Human Rights Watch interview with Mohammad Abdullah Khanday, lawyer, Srinagar, October 11, 2004.

[606] Mir Ehsan and Majid Jahangir, "Four Shot in Kupwara, Village Blames Army," *The Indian Express*, February 23, 2006, [online] http://www.indianexpress.com/res/web/ple/full_story.php?content_id=88448 (retrieved April 13, 2006).

VII. Recommendations

To the government of India

- Establish an independent and impartial commission of inquiry into serious violations of international human rights and humanitarian law by Indian security forces since the beginning of the conflict. The findings of the commission should be made public and the commission should be empowered to recommend the prosecution of persons implicated in abuses.
- Repeal all legal provisions providing effective immunity to the security forces. These include Section 45 of the Criminal Procedure Code, which prohibits the arrest of members of the armed forces without permission of the central government, and Section 197(2) of the Criminal Procedure Code, which prohibits the prosecution of members of the armed forces without permission of the central government.
- Amend the Human Rights Protection Act to allow the National Human Rights Commission to independently investigate allegations of abuse by members of the armed forces.
- Publicly release detailed information on all arrests, prosecutions, and convictions against army troops, paramilitaries, police, and public officials for human rights violations since the beginning of the conflict. Release the same information on an annual basis in the future.
- Strengthen and enforce laws and policies that protect detainees from torture and other mistreatment, including strict implementation of requirements that all detainees be brought before a magistrate or other judicial authority empowered to review the legality of an arrest within twenty-four hours. A centralized register of detainees, accessible to lawyers and family members, should be established.
- Respond promptly to habeas corpus petitions in cases of "disappearance" and those filed to challenge detentions. Take swift and public action against all state officials who have obstructed or ignored judicial orders to produce detainees in court.
- Allow the International Committee of the Red Cross to undertake the full range of its protection activities in Jammu and Kashmir, including giving it full access to all army and paramilitary interrogation and detention centers. Take all feasible measures to account for persons reported missing as a result of armed conflict and provide information to their family members.
- As a member of the United Nations Human Rights Council and therefore bound to cooperate with its mechanisms, issue a standing invitation to relevant U.N. special rapporteurs and working groups to visit Jammu and Kashmir and conduct independent investigations into abuses by all parties to the conflict. Should the Human Rights Council appoint a special rapporteur on the human rights situation in Jammu

and Kashmir and Azad Kashmir, cooperate fully with the special rapporteur, including allowing any necessary visits and implementing all the rapporteur's recommendations.

- Apprehend and prosecute Maj. Avtar Singh of the 35th Rashtriya Rifles for the March 1996 murder of human rights lawyer Jalil Andrabi. Prosecute Subedar Surinder Sinha for the May 2003 murder of student Javed Magray. Prosecute Brig. Ajay Saxena, Lt. Col. Brajendra Pratap Singh, Maj. Saurabh Sinha, Maj. Amit Saxena and Subedar Idrees Khan, identified by the Central Bureau of Investigation as those responsible for the killings at Pathribal.
- Establish a credible witness protection program to allow witnesses to safely participate in prosecutions of members of the armed forces and militants.

To the state government of Jammu and Kashmir

- Establish an independent and impartial commission of inquiry into serious violations of international human rights and humanitarian law by security forces in the state since the beginning of the conflict.
- Given the continuing failure of the military justice system to fully prosecute members of the armed forces for human rights abuses, prosecute fairly in civilian courts members of the army and other security forces of all ranks implicated in serious rights abuses. Prosecutions should not be limited to those directly responsible for abuses, but should include persons implicated as a matter of command responsibility, when superiors knew or should have known of ongoing crimes and failed to take action.
- Repeal all legislation, including the Jammu and Kashmir Disturbed Areas Act and the Armed Forces (Jammu and Kashmir) Special Powers Act, that prohibits the arrest of members of the armed forces without permission of the central government.
- Repeal all legislation, including the Jammu and Kashmir Disturbed Areas Act and the Armed Forces (Jammu and Kashmir) Special Powers Act, that authorizes the excessive use of force, including deadly force, beyond that allowed by the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.
- Repeal the Public Safety Act, which allows preventive detention for two-year renewable periods for offenses defined by vague and overbroad terms, and violates international due process standards.
- Strengthen the State Human Rights Commission by empowering it to independently investigate allegations of abuse by the security forces and militants. The commission should be empowered to investigate even those cases under review by a court so that in "disappearances" cases a family is not forced to choose between trying to find their relatives, or settling for the compensation that the human rights commission would recommend. The state and national governments should take appropriate action based on the commission's recommendations.

- Strengthen and enforce laws and policies that protect detainees from torture and other mistreatment, including strict implementation of requirements that all detainees be brought before a magistrate or other judicial authority empowered to review the legality of an arrest within twenty-four hours. A centralized register of detainees, accessible to lawyers and family members, should be established.
- To prevent "disappearances," require arresting officers of all security agencies to provide signed receipts for all detainees to family members, village elders, or persons of similar status. The receipt would be retrieved when the person is released.
- Establish a civilian review board to oversee the detention of surrendered militants. Such a review board should ensure that alleged militants are not arbitrarily detained, tortured or otherwise mistreated, or compelled to serve in the state security forces, including paramilitary forces.
- Adopt the Juvenile Justice (Care and Protection) Act that requires separate detention facilities for juveniles and adults.
- Cooperate with appropriate humanitarian agencies to create rehabilitation and reintegration programs for former child soldiers.

To militant groups

- Take all necessary steps to ensure compliance with international humanitarian law, specifically common article 3 to the 1949 Geneva Conventions and customary international humanitarian law.
- Desist from attacks on civilians and treat all persons in custody humanely.
- Desist from attacking civilian objects including schools.
- Publicly denounce abuses committed by any militant group and ensure that there is appropriate accountability for such abuses.
- Desist from using antipersonnel landmines or otherwise conducting attacks that do not discriminate between military objectives and civilians.
- Allow all Kashmiris displaced by the conflict, including Kashmiri Hindus, to return safely to their homes.
- Immediately end all recruitment of persons under the age of eighteen and demobilize combatants under age eighteen. All adults recruited before they were age eighteen must be given the option to leave.
- Permit civil society organizations to undertake the full range of protection activities including investigations of abuses committed by militants.
- Provide an independent organization with details of those militants killed in combat so that families can be informed.

To the government of Pakistan

- Stop providing arms, finance, sanctuary, and training to militant groups that have failed or are unwilling to abide by international humanitarian law. Continuing to provide assistance to such militant groups will make Pakistan complicit in the resulting abuses.
- Stop providing landmines and other intrinsically indiscriminate weapons to militant groups.
- Assist efforts of independent humanitarian organizations to obtain access to all Pakistani citizens detained in Indian prisons for taking part in militant activities. Collaborate with the Indian government in identifying Pakistani citizens killed in armed encounters so that their families can be informed.
- As a member of the United Nations Human Rights Council and therefore bound to cooperate with its mechanisms, issue a standing invitation to relevant U.N. special rapporteurs and working groups to visit Azad Kashmir and to conduct independent investigations into abuses by all parties to the conflict. Should a mandate be given by the Human Rights Council, appoint a special rapporteur on the human rights situation in Jammu and Kashmir and Azad Kashmir, cooperate fully with the special rapporteur, including allowing necessary visits and implementing all the rapporteur's recommendations.

To the United Nations

- The High Commissioner for Human Rights, and the Human Rights Council (of which both India and Pakistan are members, and thus bound to cooperate with its mechanisms), should encourage both India and Pakistan to issue a standing invitation to relevant U.N. special rapporteurs and working groups to visit Jammu and Kashmir and Azad Kashmir and conduct independent investigations into abuses by all parties to the conflict.
- The Human Rights Council should appoint a special rapporteur with an ongoing mandate to publish regular and public reports on the human rights situation in Jammu and Kashmir and Azad Kashmir. The governments of India and Pakistan should publicly commit to full cooperation with the special rapporteur, including with any necessary visits.

To the international community, in particular those states with significant influence on India, Pakistan, and militant groups

- Encourage the United Nations Human Rights Council to appoint a special rapporteur with an ongoing mandate to publish regular and public reports on the human rights situation in Jammu and Kashmir and Azad Kashmir. Encourage the

governments of India and Pakistan to publicly commit to full cooperation with the special rapporteur, including with any necessary visits.

- Urge the government of India, the government of Pakistan, and all militant and Kashmiri groups to place human rights protection mechanisms at the center of any attempt to resolve the conflict. Press these parties to ensure responsibility for abuses, thereby bringing impunity to an end, without which no sustainable settlement will be possible. All parties should accept responsibility for the excesses committed by each of them, and ensure that an end to impunity and accountability for abuses is the touchstone for a sustainable end to the conflict.
- Condemn violations of human rights and humanitarian law by the Indian security forces. Make future military aid and sales and all programs of military cooperation with India conditional on India taking significant steps to end abuses by and impunity for its forces in Jammu and Kashmir.
- Condemn Pakistan's support for abusive militant groups operating in Jammu and Kashmir. Make future military aid and sales and all programs of military cooperation with Pakistan conditional on Pakistan taking significant steps to end abuses by and impunity for militants operating in Jammu and Kashmir.
- Press the World Bank and other multilateral agencies to publicly speak out on human rights violations and condition their lending and grants on each government taking significant steps to end abuses and impunity in Jammu and Kashmir.

Acknowledgements

This report was written by Meenakshi Ganguly, South Asia researcher at Human Rights Watch, based on her research in Jammu and Kashmir conducted from 2004 to February 2006. Information from Azad Kashmir was gathered by South Asia researcher Ali Dayan Hasan from 2005 to 2006. Additional research was conducted by telephone, email and in meetings with NGOs and officials in New Delhi, Islamabad and elsewhere. Joanne Mariner, Terrorism and Counterterrorism Program director, and Zama Coursen-Neff, senior researcher in the Children's Rights Division, reviewed and commented on the report. Peggy Hicks, global advocacy director; Ian Levine, Program director; Veena Siddharth, Asia advocacy director; John Sifton, senior researcher in the Terrorism and Counterterrorism program; and Saman Zia-Zarifi, Asia research director, provided additional comments. Jim Ross, senior legal advisor, provided legal review; and Brad Adams, executive director of the Asia Division, and Ian Gorvin, consultant in the Program office, edited the report. Andrea Holley, Veronica Matushaj, Jo-Anne Prud'homme, Andrea Cottom and Jonathan Cohen produced the report. Interns Pei Wu and Annie Paradise provided research assistance, and Burke Butler assisted with production. Robert Nickelsberg took the photographs featured in the report.

Our research in Jammu and Kashmir was conducted with the assistance of the Jammu and Kashmir Coalition of Civil Society and the Jammu and Kashmir High Court Bar Association, Srinagar. Human Rights Watch would like to thank the following people and organizations for their generous assistance: Parvez Imroz, Public Commission on Human Rights; Mian Abdul Qayoom, Riaz Ahmed and numerous other lawyers from the Jammu and Kashmir High Court Bar Association, Srinagar; Association of Parents of Disappeared Persons; Farooq Kathwari, Kashmir Study Group; Teresita Schaffer, CSIS; Chris Fair, United States Institute of Peace; Michael Krepon, Henry L. Stimson Center; Nyla Khan; Angana Chatterji; Sarita Tukaram; Mohsin Mohi-ud-din; Bashir Ahmed and Lea Terhune. We also thank the many journalists, government officials, lawyers, diplomats and NGO workers who provided invaluable assistance but would prefer that their names not be mentioned. Above all, we would like to express our gratitude to the many Kashmiri men and women in Jammu and Kashmir and Azad Kashmir, who spoke with us, recounting their personal experiences of hardship and violence, often at great personal risk.

Finally, we acknowledge with appreciation the support of Cordaid and the Ladenburg Foundation.